VOLUME I

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1958

No. 518

THE ATLANTIC REFINING COMPANY, CITIES SERVICE PRODUCTION COMPANY, CONTINENTAL OIL COMPANY, ET AL., PETITIONERS,

vs.

PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK, LONG ISLAND LIGHTING COMPANY, PUBLIC SERVICE ELECTRIC AND GAS COMPANY.

No. 536

TENNESSEE GAS TRANSMISSION COMPANY, PETITIONER,

vs.

PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK, LONG ISLAND LIGHTING COMPANY, AND PUBLIC SERVICE ELECTRIC AND GAS COMPANY.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

NO. 518 PETITION FOR CERTIORARI FILED NOVEMBER 14, 1958
NO. 536 PETITION FOR CERTIORARI FILED NOVEMBER 24, 1958
CERTIORARI GRANTED JANUARY 12, 1959

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* This order is Exhibit E (pp. 56-63) in the Joint Petition dated October 11, 1957, of Long Island Lighting Company and Public Service Electric and Gas Company (No. 12403). This order and the ones issued May 20, 1957, June 24, 1957 and August 15, 1957 are omitted from the Joint Appendix pursuant to order of this Court dated February 24, 1958.

** This order is Exhibit F (pp. 64-72) in the Joint Petition, dated October 11, 1957, of Long Island Lighting Company and Public Service Electric and Gas Company (No. 12403).

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* This order is Exhibit A (pp. 19-34) in the Joint Petition, dated October 11, 1957, of Long Island Lighting Company and Public Service Electric and Gas Company (No. 12403).

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Application of New York Commission for rehearing and rescission of the order issued June 24, 1957, Docket Nos. G-11024, *et al.*, filed July 23, 1957	1003	466a
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* This order is Exhibit D (pp. 53-55) in the Joint Petition, dated October 11, 1957, of Long Island Lighting Company and Public Service Electric and Gas Company (No. 12,403).

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Petition for review of an order of the Federal Power Commission	477	475
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	Original	Print
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Order fixing dates for filing briefs before consolidated joint appendix is printed, etc.	689	650
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Order granting motion of respondent for enlargement of time for filing petition for rehearing	708	666
Order denying petitions for rehearing	712	667
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Clerk's certificate (omitted in printing)	715	669
Order allowing certiorari	716	669

DOCKET ENTRIES

1956

September 5—Letter, dated August 31, 1956 from Continental Oil Company to Secretary transmitting application for certificate of public convenience and necessity, Docket No. G-11024, received.

7—Letter, dated September 5, 1956, from Atlantic Refining Company to Secretary transmitting application for certificate of public convenience and necessity, Docket No. G-11034, received.

10—Application of Cities Service Production Company for certificate of public convenience and necessity, Docket No. G-11046, filed.

10—Letter, dated September 4, 1956, from Tidewater Oil Company to Secretary transmitting application for certificate of public convenience and necessity, Docket No. G-11049, received.

October 3—Notice of Applications, Docket Nos. G-11024, G-11034, G-11046 and G-11049.

18—Petition of the Brooklyn Union Gas Company to intervene as a party, Docket Nos. G-11024, *et al.*, filed.

18—Petition of Long Island Lighting Company for leave to intervene, Docket Nos. G-11024, *et al.*, filed.

19—Petition to intervene of Lake Shore Pipe Line Company, Docket Nos. G-11024, *et al.*, filed.

19—Petition of Tennessee Gas Transmission Company for leave to intervene, Docket Nos. G-11024, *et al.*, filed.

1956
October 22—Notice of intervention of Public Service Commission of the State of New York, Docket Nos. G-11024, *et al.*, filed.

25—Answer of Atlantic Refining Company to petitions for leave to intervene, Docket Nos. G-11034, *et al.*, filed.

November 5—Answer of Tidewater Oil Company to petitions to intervene, Docket No. 11049, filed.

1957
February 8—Notice of hearing, Docket Nos. G-11024, *et al.*

19—Designation of Presiding Examiner, Docket Nos. G-11024, *et al.*

20—Petition of Public Service Electric and Gas Company for leave to intervene, Docket Nos. G-11024, *et al.*, filed.

27—Order permitting interventions, Docket Nos. G-11024, *et al.*, issued.

28—Hearing held.

March 1—Hearing held.

4—Reference of motion to omit intermediate decision procedure, Docket Nos. G-11024, *et al.*, filed.

4—Presiding Examiner's certification of the record on motion to omit intermediate decision procedure, Docket Nos. G-11024, *et al.*, filed.

8—Order denying motion for omission of intermediate decision procedure, Docket Nos. G-11024, *et al.*, issued.

15—Errata transcript approved.

1957
March 18—Request by the Atlantic Refining Company and Cities Service Production Company for abrogation of denial of motion for omission of intermediate decision procedure, or alternatively for shortening of time for filing of exceptions, Docket Nos. G-11024, *et al.*, filed.

19—Motion of New York Commission for consolidation, Docket Nos. G-11024, *et al.*, filed.

20—Answer of the Atlantic Refining Company and Cities Service Production Company to motion for consolidation, Docket Nos. G-11024, *et al.*, filed.

20—Application of Tennessee Gas Transmission Company for reconsideration, Docket Nos. G-11024, *et al.*, filed.

22—Answer and objections of Tennessee Gas Transmission Company to motion of New York Commission for consolidation, Docket Nos. G-11024, *et al.*, filed.

22—Answer of New York Commission to Atlantic-Cities Service motion dated March 18, 1957, Docket Nos. G-11024, *et al.*, filed.

25—Telegram from Tidewater Oil Co. to Secretary requesting immediate and favorable action by the Commission in reconsideration of order refusing to omit the intermediate decision, received.

26—Telegram from Continental Oil Co. to Secretary joining in Tennessee Gas Transmission's application for reconsideration, received.

29—Supplemental certification of the record, Docket Nos. G-11024, *et al.*, filed.

1957

March 29—Presiding Examiner's decision upon applications for certificate of public convenience and necessity, filed pursuant to Section 7(c) of the Natural Gas Act, Docket Nos. G-11024, *et al.*, issued.

29—Order denying motion for rehearing and abrogation, request for oral argument, motion to consolidate and fixing time for filing exceptions, Docket Nos. G-11024, *et al.*, issued.

April 1—Errata notice correcting decision of Presiding Examiner issued March 29, 1957, Docket Nos. G-11024, *et al.*

8—Exceptions of Lake Shore Pipe Line Co. to initial decision of Presiding Examiner, Docket Nos. G-11024, *et al.*, filed.

8—Exceptions of Long Island Lighting Company to the initial decision of the Presiding Examiner, Docket Nos. G-11024, *et al.*, filed.

8—Conditional exception of The Atlantic Refining Company and Cities Service Production Company, Docket Nos. G-11024, *et al.*, filed.

8—Exceptions of New York Public Service Commission to decision of Presiding Examiner, Docket Nos. G-11024, *et al.*, filed.

9—Exception of Continental Oil Company and Tidewater Oil Company to Presiding Examiner's decision, Docket Nos. G-11024, *et al.*, filed.

9—Exceptions of Public Service Electric and Gas Company to the initial decision of the Presiding Examiner, Docket Nos. G-11024, *et al.*, filed.

1957
April 22—Findings and order issuing temporary certificates of public convenience and necessity, Docket Nos. G-11024, *et al.*, issued.

May 3—Petition of Consolidated Edison Company of New York, Inc., for leave to intervene, Docket No. G-11024, filed.

6—Application of Continental Oil Company, The Atlantic Refining Company, Cities Service Production Company and Tidewater Oil Company for rehearing, Docket Nos. G-11024, *et al.*, filed.

6—Notice of extension of time, Docket Nos. G-11024, *et al.*

9—Letter from Secretary to Bernard A. Foster, Jr., advising that the "application" has been accepted for filing as a motion for modification of the Commission's order issued April 22, 1957.

13—Answer of Tidewater Oil Company to petition of Consolidated Edison Company of New York, Inc., for leave to intervene, Docket Nos. G-11024, *et al.*, filed.

14—Answer of Public Service Electric and Gas Company to the motion for modification of the Commission's order issued April 22, 1957, Docket Nos. G-11024, *et al.*, filed.

16—Answer of New York Public Service Commission to applicants' motion dated May 6, 1957, Docket Nos. G-11024, *et al.*, filed.

16—Answer of Lake Shore Pipe Line Company in opposition to "Motion for Modification", Docket Nos. G-11024, *et al.*, filed.

16—Answer of The Brooklyn Union Gas Company and Long Island Lighting Company to applicants' motion to amend the Commission's order, Docket Nos. G-11024, *et al.*, filed.

1957

May 16—Answer of Tennessee Gas Transmission Company to motion for modification of Commission's order issued April 22, 1957, Docket Nos. G-11024, *et al.*, filed.

20—Findings and order issuing permanent certificates of public convenience and necessity and modifying previous order, Docket Nos. G-11024, *et al.*, issued.

June 4—Application of Tennessee Gas Transmission Company for rehearing and reconsideration, Docket Nos. G-11024, *et al.*, filed.

6—Order granting rehearing and fixing date for oral argument and specifying time allotted for argument, Docket Nos. G-11024, *et al.*, issued.

24—Order, upon application for rehearing, adopting initial decision of Presiding Examiner with modifications and conditions, Docket Nos. G-11024, *et al.*, issued.

July 11—Letter, dated July 9, 1957, from Cities Service Production Company to Secretary transmitting amendment to gas purchase and sales agreement, acceptance of certificate of public convenience and necessity and resolution adopted by the Board of Directors, received.

12—Letter, dated July 10, 1957, from Continental Oil Company to Secretary transmitting amendment to gas purchase and sales agreement, received.

12—Supplement to The Atlantic Refining Company's application for a certificate of public convenience and necessity; Atlantic Refining Company's acceptance of certificate of public convenience and necessity and resolution of Board of Directors, received.

1957

July 12—Letter, dated July 11, 1957, from G. M. Woodfin to Secretary transmitting amendment to contract between Tidewater Oil Company and Tennessee Gas Transmission Co., received.

22—Letter, dated July 18, 1957, from Continental Oil Company to Secretary transmitting the former's acceptance of certificate of public convenience and necessity and resolution of the Board of Directors, received.

22—Letter, dated July 16, 1957, from Tidewater Oil Company to Secretary accepting certificate of public convenience and necessity, and transmitting resolution of Board of Directors, received.

23—Application of Long Island Lighting Co. for rehearing, Docket Nos. G-11024, *et al.*, filed.

23—Application of Public Service Electric and Gas Company for rehearing and motion for stay, Docket Nos. G-11024, *et al.*, filed.

23—Application of New York Commission for rehearing and rescission of the order issued June 24, 1957, Docket No. G-11024, *et al.*, filed.

24—Application of Lake Shore Pipe Line Co. for rehearing, Docket Nos. G-11024, *et al.*, filed.

August 15—Order denying applications for rehearing, Docket Nos. G-11024, *et al.*, issued.

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[A] WITNESSES:				
Howard A. McKinley	23			
Howard R. Born	34			
William W. Witmer	45			
Howard A. McKinley		59		
Howard A. McKinley	143	145		

EXHIBITS:	Identified	Received
No. 1 (Map showing location of leases which is the subject of application, in the Gulf of Mexico.)	19	32
No. 2 (Folder entitled "In the Matter of Continental Oil Company, et al., Docket Nos. G-11024, et al., Gas Reserve Estimates.")	35	44

ITEMS BY REFERENCE:	Identified	Received
Item "A" (Gas purchase and sales agreement, dated August 17, 1956, between Tennessee Gas Transmission Company, as buyer and Continental Oil Company, as seller.)	19	22
Item "B" (Gas purchase and sales agreement, dated August 10, 1956, between Tennessee Gas Transmission Company, as buyer and The Atlantic Refining Company, as seller.)	20	22

	Identified	Received
Item "C" (Gas purchase and sales agreement, dated August 14, 1956, between Tennessee Gas Transmission Company, as buyer, and Cities Service Production Company, as seller.)	20	22
[B]		
Item "D" (Gas sales agreement between Tennessee Gas Transmission Company, buyer, and Tidewater Oil Company, seller.)	20	22

RECESSES:

Morning: 45

Noon: 80

Afternoon: 103 and 141 (two)

Transcript of Hearing Held February 28, 1957
[Vol. I]

[1] BEFORE THE

Federal Power Commission

In the Matters of:	
CONTINENTAL OIL COMPANY	Docket No. G-11024
THE ATLANTIC REFINING COMPANY	Docket No. G-11034
CITIES SERVICE PRODUCTION COMPANY	Docket No. G-11046
TIDEWATER OIL COMPANY	Docket No. G-11049

Hearing Room "D"
Federal Power Commission
G.A.O. Building
441 "G" St., N. W.
Washington, D. C.

Thursday, February 28, 1957.

The above-entitled matters came on for hearing, pursuant to notice, at 10:00 am.

Before—EWING G. SIMPSON, *Presiding Examiner.*

APPEARANCES:

ROLAND B. VOIGHT,
Box 2197, Houston, Texas, appearing on behalf of Continental Oil Company.

EDWARD J. KREMER, JR.,
Box 2819, Dallas, Texas, appearing on behalf of The Atlantic Refining Company.

Transcript of Hearing Held February 28, 1957 [*Vol. I*]

Appearances:

BERNARD A. FOSTER, JR.,
of Ross, Marsh & Foster, 725 15th St., N. W., Washington 5, D. C., appearing on behalf of The Atlantic Refining Company and Cities Service Production Company.

[2] CECIL C. CAMMACK,
Cities Service Production Company, Bartlesville, Oklahoma, appearing on behalf of Cities Service Production Company.

GENE M. WOODFIN,
Vinson, Elkins, Weems and Searls, 11th Floor, Esperson Building, Houston, Texas, appearing on behalf of Tidewater Oil Company.

ROBERT O. KOCH,
Tidewater Oil Company, Esperson Building, Houston, Texas, appearing on behalf of Tidewater Oil Company.

HARRY S. LITTMAN and
JACK WERNER,
317 Wyatt Building, Washington 5, D. C., appearing on behalf of Tennessee Gas Transmission Company.

EDWIN F. RUSSELL and
ROBERT B. LISLE,
Cullen and Dykman, 177 Montague Street, Brooklyn, New York, appearing on behalf of Brooklyn Union Gas Company.

Transcript of Hearing Held February 28, 1957 [Vol. I]

Appearances:

DAVID K. KADANE, General Counsel, and
EDWARD M. BARRETT, General Attorney,
250 Old Country Road, Mineola, L. I., New York, and

EDWIN F. RUSSELL and
ROBERT B. LISLE,
appearing on behalf of Long Island Lighting Company.

THOMAS F. RYAN, JR.,
Gallagher, Connor & Boland, 821-15th Street, N. W., Washington, D. C., appearing on behalf of Lake Shore Pipe Line Company.

J. HARRY MULHERN and
EDWARD S. KIRBY, 80 Park Place, Newark 1, New Jersey, and

WILLIAM R. DUFF, 1323 Wyatt Building, Washington, D. C., appearing on behalf of Public Service Electric and Gas Company.

KENT H. BROWN, Counsel,
55 Elk Street, Albany, New York, and

MORTON L. SIMONS, Assistant Counsel,
199 Church Street, New York 7, N. Y., appearing on behalf of New York Public Service Commission.

Transcript of Hearing Held February 28, 1957 [Vol. I]

[3]ROBERT L. RUSSELL, Assistant General Counsel, and

JOHN PAUL GENEAU, Commission Staff Counsel, appearing on behalf of the Staff of the Federal Power Commission.

Technical Aides and Consultants:

Olof W. Nelson, Assistant Chief, Bureau of Rates and Gas Certificates.

Michael Hamilton, Geologist.

Tom Williams, Engineer.

Joseph W. Lessig, Geologist.

Proceedings

[4] Presiding Examiner: The hearing in the matters of Continental Oil Company, Docket No. G-11024; Atlantic Refining Company, Docket No. G-11034; Cities Service Production Company, Docket No. G-11046, and Tidewater Oil Company, Docket No. G-11049, is called to order.

The hearing is convened by the duly designated Presiding Examiner pursuant to the Secretary's notice of application dated October 3, 1956, and the Secretary's notice of hearing dated February 8, 1957, each of which have been duly entered in this proceeding.

The hearing is on an application filed September 5, 1956, in Docket No. G-11024; September 7, 1956, in Docket No. G-11034, and September 10, 1956 in Docket Nos. G-11046 and G-11049, respectively, for certificates of public convenience and necessity pursuant to Section 7(c) of the Natural Gas Act, authorizing each of the applicants to render service as described in each respective application, subject to the jurisdiction of the Commission.

The Secretary's notice of hearing states that said applications have been on file with the Commission and open for public inspection, and further stating that each applicant proposes to sell natural gas in interstate commerce from production of a 25 per cent interest in leases in West Cameron, East Cameron and Vermillion areas, off shore the Louisiana [5] coast. The Tennessee Gas Transmission Company for resale.

The Secretary's notice of application states that these related matters should be heard on a consolidated record and disposed of as promptly as possible under the applicable rules and regulations of the Commission.

There has been received from the Records Officer of the Commission a memorandum certificate authenticated by the Secretary with respect to the service and publication of notice of hearing, which certificate is now handed to the reporter by the Presiding Examiner with the direction that it be set forth in the transcript at this point as though read.

FEDERAL POWER COMMISSION

February 19, 1957

IN THE MATTER OF CONTINENTAL OIL COMPANY, *et al.*	Docket Nos. G-11024, *et al.*

MEMORANDUM FOR THE PRESIDING OFFICER:

I hereby certify that the records in the Office of Administration show that notice of the hearing scheduled to commence on February 28, 1957, in the above-entitled

matter was published in the Federal Register on 2/14/57, 22FR, p. 938, and was sent on February 8, 1957, to the parties and interested persons of record and to States or other governmental authorities deemed to have an official interest in the proceeding.

/s/ CHARLES C. BENNINGTON
Records Officer

(SEAL)

[6] I hereby certify that Charles C. Bennington, Records Officer, whose signature appears above, is official custodian of the records of the Federal Power Commission upon which the above certification is based and was such official custodian at the time of executing the above certification.

/s/ J. H. GUTRIDE
Secretary

Presiding Examiner: By order issued February 27, 1957, and in the manner there provided, the Commission has permitted interventions by the Brooklyn Union Gas Company, Long Island Lighting Company, Lake Shore Pipe Line Company, Tennessee Gas Transmission Company and Public Service Electric and Gas Company.

Counsel may now enter their appearances for the record.

The applicants, first, Continental Oil Company.

Mr. Voight: For Continental Oil Company, Roland B. Voight, Box 2197, Houston, Texas.

Presiding Examiner: The Atlantic Refining Company.

Mr. Foster: May it please the Examiner, for The Atlantic Refining Company, Mr. Edward J. Kremer, Jr., Post Office Box 2819, Dallas, Texas, and Bernard A.

Foster, Jr., of Ross, Marsh and Foster, 7825 15th St., N. W.—and while I am on my feet, Mr. Examiner, if I may enter appearances also for Cities Service Production Company: For Cities Service Production Com- [7] pany, Mr. Cecil C. Cammack, whose mailing address is Cities Service Production Company, Bartlesville, Oklahoma, and also Bernard A. Foster, Jr., with mailing address as above.

Presiding Examiner: Tidewater Oil Company.

Mr. Woodfin: For Tidewater Oil Company, Mr. Robert O. Coch, Tidewater Oil Company, Esperson Building, Houston, Texas, and Gene M. Woodfin, of Vinson, Elkins, Weems and Searls, Esperson Building, Houston, Texas.

Presiding Examiner: The intervenors, Tennessee Gas Transmission Company.

Mr. Littman: Harry S. Littman and Jack Werner, 317 Wyatt Building, Washington 5, D. C.

Presiding Examiner: The purchaser interveners, Brooklyn Union Gas Company.

Mr. Russell: Cullen and Dykman, by Edwin F. Russell and Robert B. Lisle.

Presiding Examiner: Long Island Lighting.

Mr. Russell: Long Island Lighting Company, Cullen and Dykman, by Edwin F. Russell, Robert B. Lisle and David K. Kadane, General Counsel, and Edward M. Barrett, General Attorney, Long Island Lighting Company, 250 Old Country Road, Mineola, New York.

Presiding Examiner: Lake Shore Pipe Line Company.

Mr. Ryan: Thomas F. Ryan, Jr., 821 15th St., N. W., Washington, D. C.

[8] Presiding Examiner: Public Service Electric and Gas.

Mr. Kirby: J. Harry Mulhern and Edward S. Kirby, of 80 Park Place, Newark 1, New Jersey, and William R. Duff. My name is Kirby.

Presiding Examiner: The New York State Public Service Commission.

Mr. Simons: For the New York Public Service Commission, Kent H. Brown, Counsel, 55 Elk St., Albany, New York, and Morton L. Simons, Asssistant Counsel, 199 Church Street, New York 7, New York.

Presiding Examiner: Commission's Staff.

Mr. Geneau: For the Federal Power Commission, Robert L. Russell, Assistant General Counsel, John Paul Geneau, Commission's Staff Counsel; Olof W. Nelson, Assistant Chief, Bureau of Rates and Gas Certificates; Mike Hamilton, Geologist, Tom Williams, Engineer, Joseph W. Lessig, Geologist.

Presiding Examiner: Are there other appearances? (No response.)

Presiding Examiner: Apparently not.

The Examiner now calls upon counsel for each respective applicant to briefly state his position with reference to that application, what the applicant petitions for and what counsel expects to prove.

Continental Oil Company.

[9] Mr. Voight: Your Honor, this application covers the sale of gas under four different contracts from the four applicants. The gas is produced in the Gulf of Mexico, off shore from Louisiana. The sale is to Tennessee Gas Transmission Company. We believe that this is a typical certificate matter, and the only matter that is different in this particular case is the urgent necessity for prompt action for the certificates to issue, due to the fact that leases are imperiled if production is not com-

menced by 1958, and also due to the fact that in view of the weather situation in the Gulf of Mexico, a large portion of the year is not available for the construction of a line which must be laid, as the only method of taking production from these leases.

The leases are gas leases, only, no oil.

And our evidence will show, also, that it is imperative that construction on the lines start as promptly as possible, and that that is the urgency for prompt action on the applications by the Commission.

Presiding Examiner: Atlantic Refining?

Mr. Foster: Mr. Examiner, in view of the statement by Mr. Voight for Continental, the operator in this case, I may make a very brief statement with respect to, jointly, the applications filed at Docket No. G-11034, The Atlantic Refining Company, and G-11046, Cities Service Production Company.

In brief, Mr. Examiner, we anticipate that the evidence to [10] be adduced will suffice fully to serve as a basis upon which the Commission can make the required findings necessary to issuance of a certificate under Section 7(c) of the Act.

Presiding Examiner: Does it appear in the applications that Continental is the operator?

Mr. Foster: Yes, Mr. Examiner; it does so appear.

Presiding Examiner: Tidewater Oil Company.

Mr. Woodfin: Tidewater's position as an owner of an undivided one-fourth interest in these leases is necessarily the same as the position of Continental, Cities Service and Atlantic, and their opening statements may be adopted as Tidewater's statement.

Presiding Examiner: The position of the intervener Tennessee Gas Transmission Company?

Mr. Littman: Mr. Examiner, each of the applicants in these proceedings has requested a certificate of public convenience and necessity authorizing the sale of gas to Tennessee Gas Transmission Company. We have intervened in support of those applications to the end that appropriate certificates be issued to these applicants at the earliest possible date.

It is, therefore, our position in these proceedings that we fully support the applications that have been filed herein.

Presiding Examiner: The intervener Brooklyn Union and Long Island Lighting?

Mr. Russell: Mr. Examiner, I am not going to make any [11] definitive statement at this time. I would like to defer that until I have seen the proof put in by the applicants. As our petitions to intervene indicated, our concern in this matter is as to the price and the contract provisions and what their possible effect might be on Tennessee's other contracts.

It seemed to us in the beginning that those were matters primarily to be considered in the Tennessee certificate case, and yet we are a little puzzled, because here is a certificate case for the producers to supply gas to Tennessee which will be an important part of the Tennessee certificate case.

So far as this particular proceeding is concerned, as far as the producer certificates are concerned, we would have no objection to deferring whatever questions we wish to raise until the Tennessee certificate case, provided that we are not being prejudiced in any way by our failure to raise those questions in this proceeding.

It seemed to me just a little odd that you would have a certificate case for the producers before you would have the case where the gas is to be used certificated.

Presiding Examiner: Lake Shore Pipe Line Company.

Mr. Ryan: Mr. Examiner, Lake Shore has intervened in this case as a full requirements customer of Tennessee Gas Transmission Company. Tennessee is the proposed purchaser of the gas for which certificates are being asked in this proceeding. We intend to—our purpose in this proceeding is to have ex- [12] plored and determined all aspects of this proceeding which may relate to whether the public convenience and necessity requires the proposed sales and service by these applicants. We are concerned with certain elements of the contractual relationship between these applicants and Tennessee, particularly we are concerned with the matter of price.

It appears from the various contracts that the initial price, from Article 10 of those contracts is 21.4 cents, plus a possible additional gathering tax refund. This price is higher than any price known to Lake Shore being paid in the Louisiana and Texas areas.

We feel that the purchase of this gas by Tennessee will have a very definite impact upon the price—upon the rates charged by Tennessee to its customers. The volumes of gas involved here are sizable. It appears from Tennessee's related filing in Docket G-11107 that the quantity of gas may well exceed ten per cent of Tennessee's overall gas supply. Considering the fact that Tennessee's average cost of gas is considerably lower than the 21.4 cents involved here, it is obvious that the impact on the customers is going to be sizable.

Exactly what that impact will be, just can not be determined at this time. It can't be determined until we have had an opportunity to explore all the elements involved in Tennessee's certificate case.

We expect the applicants in this case to go forward on

[13] the burden of proof that the public convenience and necessity requires the issuance of these certificates.

We feel, also, that additional evidence other than the fact that these contracts were entered into at arms-length is necessary under the Commission's decisions.

Presiding Examiner: Public Service Electric and Gas.

Mr. Kirby: Mr. Examiner, the interest of Public Service Electric and Gas in these consolidated dockets stems from the fact that we are also a purchaser of natural gas from Tennessee, who is the purchaser in these dockets. Unfortunately, we are not in a position, we do not have sufficient knowledge to take a strong position, such as Tennessee did, and state flatly at this time that we are either opposing the applications or we are supporting them.

After we have that information and have had a chance to analyze the underlying contracts we will be in a better position to state further where we are.

But just preliminarily, I would like to say that we have the same doubts and the same feelings as have been expressed by counsel for Brooklyn Union and Lake Shore. The price seems high to us and we want to have a chance to examine the reasons behind the price and the need for the periodic escalation clauses which are involved, which seem to be high, too.

Basically, Mr. Examiner, we did not want to waive any rights we might have by not intervening in these dockets and then be [14] met possibly later on with a statement in the Tennessee docket that, well, "You sat by and let the certificates go and you should have raised the issue then.".

Presiding Examiner: The New York State Public Service Commission.

Mr. Simons: Our interest in this proceeding, Mr. Examiner, stems from the fact that, as has been noted, all of

the gas involved here is to be sold to Tennessee, and Tennessee is one of the major long lines, pipeline suppliers of the New York market, something between ten and twenty per cent of its gas wind up in New York, either directly or indirectly through the consolidated Natural and Columbia systems.

Other than that difference, I think I would go along with everything that counsel for Lake Shore Pipe Line stated.

The high price of 21.4 cents, plus the one-cent gathering tax, has been noted. There is also the step escalation clause of two cents each four years, which is the steepest step escalation known to us, and I think drastically changes the concept of step escalation.

I would also note that the final price called for in the contract just under step escalation alone is 35.4 cents, plus tax. That, of course, is some years down the road yet.

There is one other factor, of course, that relates to the economic feasibility. I think that that was touched on generally when public interest was spoken of. But the gas that is [15] involved here to our understanding is out in the Gulf somewhere, in 11107 Tennessee is proposing to spend some $15 million to construct 120 miles of pipe to bring it in from offshore on to land, and they are proposing to spend, as I understand their application in 11107, some $85 million more to build a new large-diameter pipeline from the point in Louisiana, where they will take the gas, from southeast Louisiana, to their main line of Portland, Tennessee.

So that there is involved here an expenditure of $100 million. Perhaps Tennessee can explain or will state that not all of that $100 million relates to this specific gas. But it looks like by the time the gas gets up to Portland,

Tennessee, it is going to carry an awfully high price. You can't buy gas at 22.4 cents out in the Gulf somewhere and wind up selling it in New York for the same price you could if you were buying it for 12 or 13 cents on dry land, which is, as I understand it, Tennessee's average price now, or at least as of the most recent date.

Beyond that, we would have to wait and see what case is put in by applicants. We are, as the other counsel have noted, somewhat mystified by the fact, first, that these dockets have not been consolidated with 11107; and secondly, assuming that they are not to be consolidated, we are further mystified by the fact that this case is proceeding first, rather than either following the pipeline certificate case or running concurrently with [16] it.

Perhaps that is simply a procedural matter, but it does indicate, as Mr. Kirby indicated, that it is necessary, apparently, to come in here to protect whatever rights we have.

Presiding Examiner: Very well.

Staff Counsel?

Mr. Geneau: Mr. Examiner, Staff Counsel has no statement to make.

Mr. Foster: Mr. Examiner.

Presiding Examiner: Are you going on to something else now? What is the procedural situation with respect to G-11107 in these consolidated dockets, Staff Counsel?

Mr. Geneau: I understand, Mr. Examiner, that I believe a notice of application has been put out on G-11107 and that interventions have been filed in that proceeding, and that the Commission has acted upon certain interventions in that proceeding, but as to whether or not the 11107 proceeding has been set for hearing or is to be set for hearing in the near future, I have no knowledge.

It is my understanding, though, that this proceeding will proceed separately and distinct from G-11107.

Presiding Examiner: All right.

Mr. Foster: There is one clarifying remark, if I may, I would like to refer to at this time.

In Mr. Kirby's opening statement he referred to the fact [17] that he had not had an opportunity to consider and analyze the contracts, I believe was the language he used. I am sure he did not intend to suggest that in any respect that applicants here were delinquent in contributing to that fact. Lest the record might possibly convey that impression, I would like to call attention to the fact that the notice of these applications involved here was published on October 11, 1956, and time within which petitions for leave to intervene expired some time shortly after that, I think on October 22, 1956.

Mr. Kirby's petition was filed, I believe, on the 20th of February, 1957, and it is obvious, too, I might add, that the Commission's order issuing today granting that intervention precedes the running of time within which applicants would be allowed opportunity to respond to that petition under the Commission's rules.

Presiding Examiner: How many witnesses does the applicant Continental expect to present?

Mr. Voight: One, immediately.

Presiding Examiner: And the applicant Atlantic? Cities Service?

Mr. Foster: For Atlantic Refining Company and Cities Service, Mr. Examiner, we do not at this moment expect the necessity to put on separately witnesses in support of these applications, apart from the presentation to be made otherwise.

Presiding Examiner: By Continental, the operator?

[18] Mr. Foster: By Continental and, to some extent, by the intervener Tennessee.

Mr. Woodfin: Same position for Tidewater.

Presiding Examiner: No witnesses?

Mr. Woodfin: No witnesses contemplated at this time.

Presiding Examiner: Tennessee Gas Transmission.

Mr. Littman: We shall have two witnesses, Mr. Examiner.

Mr. Ryan: May we have a statement from counsel for Tennessee as to the nature of the evidence which they are going to put on? I don't understand that they are applicant in this case. I am a little curious.

Mr. Littman: As I indicated, our position here is in support of the applications, and it will be testimony directed to support of these applications.

Presiding Examiner: Counsel, you may proceed.

Mr. Voight: Thank you, sir.

Mr. McKinley, will you take the stand.

Whereupon, HOWARD A. MCKINLEY was called as a witness, being first duly sworn, was examined and testified as follows:

Mr. Voight: If Your Honor please, before we start interrogating the witness, we would like to have certain matters identified.

Continental Oil Company asks that there be identified as [19] Exhibit No. 1 a map, which shows the location of the leases which are the subject of this application in the Gulf of Mexico.

Presiding Examiner: The document handed to the reporter may be marked Exhibit 1 for identification. That is the map.

(The document above referred to was marked Exhibit No. 1 for identification.)

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Mr. Voight: Continental Oil Company asks that there be identified as Item "A", the gas purchase and sales agreement, dated August 17, 1956, between Tennessee Gas Transmission Company, as buyer, and Continental Oil Company, as seller, which contract is attached as Exhibit B to the application in Docket G-11024, and we have a limited number of courtesy copies of that contract.

Mr. Ryan: May I point out that the interventions were not granted until last evening and interveners had no opportunity to request copies of those contracts. I think it is incumbent on the applicants to furnish copies to the parties.

Presiding Examiner: Item "A" for identification.

(The document above referred to was marked Item "A" for identification, by reference.)

Mr. Voight: If Your Honor please, off the record a minute, the typed copy is the actual exhibit, the printed copy is easier to read.

Continental Oil Company asks that there be identified as [20] Item "B" the gas purchase and sales agreement, dated August 10, 1956, between Tennessee Gas Transmission Company, as buyer, and The Atlantic Refining Company, as seller, which contract is Exhibit B in the application in Docket G-11034.

Presiding Examiner: Item "B", by reference.

(The document above referred to was marked Item "B" for identification, by reference.)

Mr. Voight: Continental asks that there be identified as Item "C" the contract, which is Exhibit "B" in Docket G-11046, which is the gas purchase and sales agreement dated August 14, 1956, between Tennessee Gas Trans-

mission Company, as buyer, and Cities Service Production Company, as seller.

Presiding Examiner: Item "C" by reference.

(The document above referred to was marked Item "C", for identification, by reference.)

Mr. Voight: Continental Oil Company asks that there be identified as Item "D" the gas sales contract which is Exhibit "B" in the application in Docket G-11049, which is the gas sales agreement between Tennessee Gas Transmission Company, as buyer, and Tidewater Oil Company, as seller.

Presiding Examiner: Item "D", by reference.

(The document above referred to was marked Item "D", for identification, by reference.)

Presiding Examiner: Is there objection by any participant to the receipt in evidence of Items "A" through "D"?

[21] Are those all the items you have to offer?

Mr. Voight: Yes, sir.

Mr. Ryan: May I ask counsel if this witness is going to sponsor those contracts or sponsor any one of those contracts?

Mr. Voight: He is going to identify them and testify to them.

Mr. Ryan: Did he participate in the negotiation of the contracts?

Mr. Voight: No, sir, he didn't participate in them, but he has custody of them.

Mr. Ryan: Will he be prepared to explain any ambiguities that may be contained in the contracts?

Mr. Voight: He will testify that he is familiar with the terms. As far as ambiguities are concerned, I haven't read more than three or four or five hundred gas contracts and I can't explain all of the ambiguities and we can't offer you a witness that we know will be competent to explain what you consider to be an ambiguity.

Mr. Ryan: Under those circumstances, Mr. Examiner, I don't know how far I may get in asking questions about these contracts. I would like to reserve a motion to strike these items.

Presiding Examiner: Motion to strike is always in order.

Mr. Woodfin: Mr. Examiner, I don't intend to stand on my feet here this morning, but I want to point out that these are [22] the contracts which are attached to the sworn applications which are on file and which are the nexus of this proceeding.

Presiding Examiner: I understand.

Items "A" through "D" are received and incorporated as evidence in this proceeding, by reference to the formal files of the Commission.

(The documents heretofore marked Items "A" through "D", for identification, were received in evidence by reference.)

Mr. Simons: Could I inquire before you commence your examination, Mr. Voight: You gave me a copy of the contract between Tennessee and Continental which has been identified as Item "A". Are the other contracts, Items "B", "C" and "D", identical in all respects, except for the name of the seller appearing on the cover sheet and wherever else it might appear in the contract?

Mr. Voight: And Section 17, which is on pages 24 and 25, of the other contracts, which designate Continental as the seller's representative to give and receive notices.

Mr. Simons: I see. I think I noticed, as you were describing them, some difference in the dates. Is that correct—was there a difference in the dates?

Mr. Voight: Yes.

Mr. Simons: I have August 17 for Continental and August 13 for Cities Service. Could you give me the other two dates?

Mr. Voight: August 10th for Atlantic, and August 14 for [23] Tidewater.

Mr. Simons: Thank you.

Presiding Examiner: Counsel.

Mr. Voight: Yes, sir.

Direct examination by Mr. Voight:

Q. Will you please state your name and your residence? A. My name is Howard A. McKinley. I reside in Houston, Texas.

Q. By whom are you employed, Mr. McKinley? A. Continental Oil Company.

Q. Where did you go to school, Mr. McKinley? A. St. Lawrence University, Canton, New York, Oxford University, Oxford, England.

Q. How long have you been with Continental Oil Company and what have been your various positions or activities? A. I have been with Continental for the past five or so years. During the first six months with Continental Oil Company I was in their Production Department. The following period of time I have been with Continental, I have been associated with their Land Department, and

during the majority of that time involved in and associated with their off-shore activities. At the present time I am Regional Land Superintendent, CATC, Marine Region.

[24] Q. Will you explain what you mean by Continental CATC marine region? A. Continental Oil Company, The Atlanta Refining Company, Tidewater Oil Company and Cities Service Production Company own equal, undivided interests in a number of leases on the shelf in the Gulf of Mexico. CATC is in effect an abbreviation of those four names. As a matter of convenience and as a practical matter the other three companies have designated Continental as operator of these leases, and as an organizational structure within the company CATC marine region exists, that is within the Continental Oil Company and it is manned wholly by Continental employees and their sole function is the operation of these properties.

Q. Have you been authorized by Continental to appear and testify on its behalf in this proceeding? A. I have.

Q. Mr. McKinley, Continental has filed an application in Docket G-11024 to sell gas to Tennessee Gas Transmission Company from certain leases in the East and West Cameron and Vermillion areas in the Gulf of Mexico, which leases are identified in a contract; Atlanta Refining Company has filed a similar application in Docket 11034, Tidewater has filed a similar application in Docket 11049, and Cities Service has filed a similar application in [25] Docket 11046, all of which have been consolidated in this proceeding and the four contracts have been identified as Items A, B, C and D. I hand you a map which has been identified as Exhibit 1 and I ask you, does this map correctly show the leases that are operated by Continental

and are subject to the four various contracts that have been identified? A. They are, and it does.

Q. Does Continental, as the operator of these leases market all of the production from the leases? A. No, under the several operating agreements the several parties thereto retain the responsibility and duty of marketing their own production and their interest in these leases.

Continental is merely the operator as a matter of convenience and has no authority or responsibility to market the production of the other parties.

Q. Does Continental own any interest in either of the other three companies? A. No, Continental has no interest in any of the other three parties, nor do any of the other three parties have any interest in Continental.

Q. Does Continental own any interest in Tennessee Gas Transmission Company? A. No, it does not.

[26] Q. Does Tennessee own any interest in Continental? A. No.

Q. Is that likewise true with respect to each of the other three companies? A. It is.

Q. Now, Mr. McKinley, I direct your attention to the contract which is Exhibit B in Docket 11024 which has been identified as Item A, which is a gas sales contract dated August 17, 1956. Are you familiar with the terms and provisions of this agreement? A. I am.

Q. Is that the contract that Continental has entered into for the sale of gas produced from its one-quarter interest in the leases that we have referred to? A. Yes, it is.

Q. Have the other companies also entered into the contracts that were identified as Items B, C and D, each for the sale of gas attributable to its particular quarter

interest in these leases? A. Yes, they have, and each company's representative negotiated the contracts for their interests, four separate contracts were executed.

Q. Now, in answer to Mr. Simons' question awhile ago, are the basic terms and conditions of these four contracts identical? [27] A. They are.

Q. Mr. McKinley, when are deliveries scheduled to commence under the terms of these contracts? A. November 1, 1957.

Q. How many acres are covered by these four agreements? A. Approximately 95,000.

Q. What is the total volume of gas dedicated under these four contracts? A. The present dedication is a dedication up to a maximum of two trillion cubic feet.

Q. Now, Mr. McKinley, up to the present time how many wells have been drilled by the four companies on these leases which are subject to these contracts? A. There have been 22 wells drilled on the leases, nine of which are dual completions, there are three rigs running now and there are 11 wells programmed, that is 11 additional wells programmed for this year, and, of course, there will be additional development in years to come.

Q. How will deliveries from these wells to Tennessee be affected under the contracts? A. At the platform. There are 9 platforms in place at the present time upon which there is either a well drilling or a well capable of producing, or both.

Q. Will Continental, as the operator, be able to [28] commence deliveries by the projected date of November 1st, 1957, in the event Tennessee is granted a certificate in ample time to construct the facilities necessary to accept such deliveries? A. We can see no reason why not.

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Howard A. McKinley—Direct

Q. You told us that the leases from which the gas will be produced are located in the Gulf of Mexico on the shelf offshore, Louisiana, were those leases obtained from the State of Louisiana or from the Federal Government? A. They originally, that is all of them were originally acquired from the State of Louisiana, and they have been continued under Section 6 of the Outer-Continental Shelflands Act.

Q. Now, Mr. McKinley, you have stated and the contracts show that the date on which deliveries are to be commenced is on or before November 1, 1957. Has your production department advised the company when they consider that the construction of the marine or water lines must be commenced in order to effect this delivery date, or schedule? A. Yes. The production department of Continental feels this way: That the only feasible time within which to, or during which one might construct a marine line out here would be during the spring and early summer, in order [29] to avoid the late summer-early fall hurricane season and also the late summer-early fall wave conditions, as a consequence of that opinion they have concluded that this line should be constructed or should be begun as soon as possible after April 1, 1957.

Q. Mr. McKinley, in addition to the necessity to have the deliveries commence by November 1st of this year, is there an additional and perhaps compelling reason why the marine lines must be fully constructed during the year 1957? A. Yes, there are. Each of the companies have been advised by their legal staff, legal departments that in order to comply with the obligations of the oil and gas leases and also in order to comply with the obligations of the Outer-Continental Shelflands Act and the rules and

regulations that have been adopted thereunder, that the reserves underlying these leases should be on production by 1958. Failure to have those reserves on production, it would appear to them and in their advice they so state, would place these leases in jeopardy. That is a risk Continental and the other companies are not willing to accept. The only practical way to produce these leases is by the construction of a pipeline and the taking of the gas via the pipeline route. As a consequence of that fact, we have entered into a contract with the Tennessee Company [30] to construct the facilities during 1957 in order to enable us to have this production in existence by 1958. However, to protect ourselves we have an option in that contract which allows us in the event Tennessee is unable to construct these facilities during 1957, an option which will allow us in sufficient time to take and explore other steps, which will enable us to insure production during or rather by 1958.

Q. Is that the primary reason for inserting in the contract the date of April 1, 1957, as the last date on which a certificate could be issued without giving the selling companies the right to cancel the agreement? A. That is right.

Q. Now, Mr. McKinley, in the event that satisfactory certificates are issued within the time provided in the contract, will Continental be ready, willing and able to perform its obligations under the contract?

Mr. Simons: I object to the question, I don't know what is meant by counsel when he says "satisfactory certificates."

Presiding Examiner: May I have the question?

(Question read.)

Presiding Examiner: What do you mean by satisfactory?

Mr. Voight: If Your Honor please, the contracts provide that unless satisfactory certificates are issued by [31] this date of April 1, 1957, the contracts can be terminated.

Presiding Examiner: Where is that?

Mr. Voight: That is Section 2-A of each contract.

Presiding Examiner: Section 2-A?

Mr. Voight: Yes, sir. It is on page 2 of the copy that you have.

Presiding Examiner: Objection is overruled.

The Witness: Could you give me the question again, Mr. Voight?

Presiding Examiner: Read the question, please.

(Question read.)

The Witness: Yes, they will. Continental is a major oil and gas company with very substantial assets, and they will be ready, willing and able to perform their side of this bargain.

By Mr. Voight:

Q. Are the other three non-operating companies likewise ready and willing to carry out their agreements under the circumstances outlined above? A. They are.

Mr. Ryan: Mr. Examiner, I have not objected to these questions relating to what the other companies are going to do. I assume on cross-examination this witness is going to be prepared to testify as to what the other companies are going to do likewise.

[32] Presiding Examiner: Very well.

By Mr. Voight:

Q. Are the other companies financially able to carry out their obligations? A. They are.

Mr. Voight: If Your Honor please, at this time Continental offers in evidence Exhibit 1, which is the map which has been identified. I might state that in each of the applications there is a map, but the four maps are made up by four different draftsmen, and some of them are large-scale and some of them small-scale, and this particular map shows the relation of leases to the Louisiana mainland.

Presiding Examiner: Is there objection?

(No response.)

Presiding Examiner: The Examiner hears none. The document offered is received.

(The document heretofore marked Exhibit No. 1 for identification was received in evidence.)

By Mr. Voight:

Q. Mr. McKinley, looking again at Exhibit 1, the map, is it correct that the squares off shore which have small numbers in them are each approximately 5,000 acres? A. That is correct. Some of these are subdivided and it is on an eliquot part basis. But each square, as such, is 5,000 acres, approximately.

[33] Q. And the vertical lines on the exhibit show the Vermillion area on the right; the East Cameron area, in the center; and the West Cameron Area on the left; is that correct? A. That is correct.

Mr. Voight: If Your Honor please, that is all the questions we have of Mr. McKinley.

Presiding Examiner: Are there any questions of the witness by the intervener Tennessee Gas Transmission Company?

Mr. Littman: No questions.

Presiding Examiner: Any questions by the intervener Brooklyn Union Gas Company?

Mr. Russell: No, sir.

Presiding Examiner: That is also for Long Island?

Mr. Russell: Yes.

Presiding Examiner: Lake Shore Pipe Line Company.

Mr. Ryan: Your Honor, I would prefer to defer the questions until we have heard the rest of the direct evidence that is going to be presented here, if we may.

Presiding Examiner: Any objection?

Mr. Voight: No, sir.

Presiding Examiner: Public Service Electric and Gas.

Mr. Kirby: Same position as Mr. Ryan has taken, sir.

Presiding Examiner: New York Public Service Commission.

Mr. Simons: So long as that is the position being taken, I will defer also.

[34] Presiding Examiner: Staff Counsel.

Mr. Geneau: Staff has no objection to the intervener's request.

Presiding Examiner: The witness is temporarily excused.

(Witness excused.)

Mr. Voight: If Your Honor please, we understand that Tennessee has two witnesses in support of the contracts and we do not want to close our evidence until the testimony of Tennessee's witnesses has been received.

Presiding Examiner: Very well. Otherwise, you have completed your case?

Mr. Voight: Yes, sir, according to our present thinking.

Presiding Examiner: And that is the position of the other applicants, the Examiner understands?

Mr. Foster: For Atlantic and Cities Service, that is correct, Mr. Examiner.

Mr. Woodfin: That is correct for Tidewater, Your Honor. It is understood, of course, that the witnesses which will be offered by Tennessee are offered in support of the application.

Presiding Examiner: Very well.

Tennessee Gas Transmission Company.

Mr. Littman: Mr. Examiner, we call Mr. Born as the next witness.

Whereupon, HOWARD R. BORN [35] was called as a witness, being first duly sworn, was examined and testified as follows:

Mr. Littman: Before proceeding with the testimony of this witness, Mr. Examiner, I would like to have marked for identification as Exhibit No. 2

a folder containing certain material which bears the title on the cover, "In the Matter of Continental Oil Company, et al., Docket Nos. G-11024, et al., Gas Reserve Estimates." I ask that be marked for identification as Exhibit No. 2.

Presiding Examiner: The document handed the reporter may be marked Exhibit No. 2, for identification.

(The document above referred to was marked Exhibit No. 2 for identification.)

Direct examination by Mr. Littman:

Q. Will you please state your name, residence and occupation, Mr. Born? A. My name is Howard R. Born. I reside in Houston, Texas. I am employed by Tennessee Gas Transmission Company, and have been since October, 1948. I am Director of the Reserve Department of Tennessee Gas, and part of the functions of this department is making gas reserve estimates and deliverability studies of fields and areas in which Tennessee has an interest or has gas purchase contracts.

Q. Will you please state your education and experience? [36] A. I was graduated from the University of Oklahoma, in January, 1938, with a Bachelor of Science degree in Geology, and since that time I have been actively engaged in the petroleum industry. A substantial amount of my work since graduation has been making reserve and evaluation studies on many gas and oil fields located in Texas, Mississippi, Louisiana, principally, and some in Arkansas, but the majority of my work has been in the Gulf Coast area.

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I am a member of the Houston Geological Society, the American Association of Petroleum Geologists, American Mining and Metallurgical Institute, Petroleum Division, also a registered professional engineer in the State of Texas.

Q. Have you previously testified before the Federal Power Commission? A. Yes, sir, I have. I testified in Docket Nos. G-962, G-1012, G-1248, G-1573, G-1969, G-2108, G-2331, G-8805, G-9448, and G-9454.

Q. And did the testimony in those dockets relate to gas reserves? A. They did, yes, sir.

Q. Will you state briefly the purpose of the testimony which you are about to give in this proceeding? A. I will testify as to the gas reserves involved in the instant proceeding. These estimates were prepared by me and under my supervision and direction, are located in the following [37] fields: Block 49, Block 62, Block 71, in the East Cameron off-shore area; Block 192 in the West Cameron off-shore area, located in Louisiana. These reserves are dedicated by separate contracts to Tennessee by Continental Oil Company, Atlantic Refining Company, Tidewater Oil Company and Cities Service Production Company.

Q. Will you please refer to the map which has been marked for identification as Exhibit No. 1, and state whether that map shows the leases involved in the estimate which you made and is that shown in a yellow color? A. Yes, sir, the reserves underlying the blocks which I have just named are included in the yellow-colored blocks in the map that has previously been included as an exhibit.

Q. Mr. Born, you have before you a copy of Exhibit No. 2, for identification? A. I have, yes, sir.

Q. Was that exhibit prepared by you or under your supervision and direction? A. It was.

Q. Does it contain the estimate of gas reserves to which you referred a moment ago? A. Yes, sir, this Exhibit 2 contains the estimates of gas reserves which I have made for the various fields located in acreage dedicated to Tennessee by the four companies I have previously mentioned.

[38] Q. Now, will you please describe the method used by you in computing these gas reserves, making such references to Exhibit No. 2 as you give your explanation, as will be helpful to an understanding of both the exhibit and your method of estimation? A. Well, in estimating these gas reserves I have used the volumetric method. I obtained the information in making these reserves from the operator, and I have from these electrical logs, and core descriptions and well-test information, I have constructed structural maps and I have determined the sand thickness based on electrical log and core information, and arrived at contracts based on production tests and electrical log information, and I have arrived at the proven area from this information and the structural maps which I had made, and which I defined the productive limits on which I have used.

Like I previously said, I have constructed an isopach map of the average pay thickness and I have arrived at the porosity and connate water based on core information which I have in these fields, as well as my experience and other information I have in similar fields along the Louisiana Gulf Coast area.

Reservoir temperature and reservoir pressure, I have based that on well information, as well as I have utilized

gradiant curves, which I have, which would give me both information as to the temperature, reservoir temperature and pressures; and I have arrived at the deviation factor for compressability [39] using the Katz and Brown curve. And from this I have used the volumetric formula to arrive at my gas in place, and I have assigned a recovery factor to this gas to arrive at my original recoverable reserves.

Q. I note from Exhibit No. 2 that it consists of a series of maps showing the acreage dedicated to Tennessee and committed by the applicants involved in this proceeding to the Tennessee contract, showing the location of the wells and other general information in pictorial form, and each of those maps is preceded by a tabulation setting forth, from lines 1 to 22, for example, on the first page of this exhibit, certain basic data.

Now, is there any further explanation that you would like to give that would be helpful in an understanding of any of those basic figures? A. Well, I have noticed on my first calculation sheet, reserve sheet for non-associated gas, in Block 49, I have the B.t.u. content of gas, which I have made to be above 1,000 B.t.u., which is normal for gas, a characteristic of gas in the Gulf Coast area.

I might point out on the map for Block 49 I have assigned, you will note, 640 productive acres, and there is no structural outline of the proved area. That is due to the fact that being two holes drilled there, there was not sufficient information to actually draw a structure. So based on the sand thickness and [40] other information which I have, I have determined a drainage area for this sand would be 640 acres.

Q. I note that on these maps you show a star, indicating, I presume, a well? A. That is a gas well, yes, sir.

Q. Those would be gas wells? A. Yes.

Q. All of this gas reserve involved in this proceeding is so-called non-associated gas; is that right? A. That is correct, yes, sir.

Q. It is not associated with oil? A. No, sir. All the gas reserves I have set up for the four contracts are all non-associated gas.

Q. I note that in a good many of these maps—take, for instance the third map that appears in Exhibit 2, you show a dotted or dashed line running between two wells. Now, the same is true on others of these maps.

What does that dashed line represent? A. May I ask you to further identify that map?

Q. That is the third one, Block 62, field, East Cameron. A. That would be the 6310-foot Miocene Sand

Q. Yes. That is the third map. I simply selected that at random, Mr. Examiner. A. Are you talking about the dashed line, the dotted line between A-1 and A-2 wells?

[41] Q. Yes. A. The A-1 was the first well drilled and it is a straight hole, the A-2 is a directional drill hole from the platform which the A-1 is on, and the dashed line indicates direction from the A-1 platform that the A-2 bottom hole location is.

Q. Would you just elaborate very briefly as to what you mean by a straight hole, as distinguished from a directional hole, and how it relates to this platform that I understand is out in the water of the Gulf of Mexico? A. Well, they have these drilling platforms and I guess, from a matter of economies, they build one platform and from this platform they drill several more wells, some-

times three, four, five or six, and they usually drill the first well straight down. Other wells drilled from a platform, naturally, you don't want to complete it the way you did the first well, so in order to further explore your structure, why, you deviate that hole in different directions, whichever direction you care to go, based on your geological and geophysical information.

So you direction-drill that well to the part of the field or lease, part of the lease which you want to go to and complete it there, because you don't want to, like I previously stated, just drill a bunch of wells straight down. This is also a matter of economics, where it is not economical to build a platform for each location, so you do multiple drilling off a single platform.

[42] Q. In other words, is it fair to say that the well designated in this particular instance as A-2 in that particular location, that is the bottom of the well, that is where the bottom of the well is located? A. Yes, sir, in that direction.

Q. Because of the fact that the drilling has been on a directional basis? A. That is correct, yes, sir.

Q. In other words, that dashed line does not mean that it is a field line or any other facility? A. No, that shows it comes off the platform on which the A-1 well was drilled.

Q. Is that true generally throughout this exhibit, wherever the terms A-1, A-2, A-3, A-4, and so forth, are used, A-1 being the first well on the platform? A. Yes, sir, that is substantially correct—that is correct.

Q. I note that in each instance, in each tabulation for each of the specific blocks you show the porosity of the sand, the thickness of the sand, the connate water and re-

coverable reserve and the basis by which you arrived at it; is that correct? A. Yes, sir, that is correct.

Q. Now, what is the amount of the reserve that you estimate to be recoverable from the leases dedicated by the Continental Oil Company, Atlantic Refining Company, Tidewater Oil Com- [43] pany and Cities Service Oil Company contracts? A. I estimate that the recoverable gas reserves under the acreage dedicated by these companies, four companies, through these four contracts, to be 1,673,929 MMcf at 14.73 p.s.i.a. pressure base.

Q. Stated in cubic feet, that would be 1,673,000,000,000 feet? I ask you that because frequently the reserves are spoken of in terms of cubic feet. A. Yes, sir, it would be 1,673,000,000,000 cubic feet of gas.

Q. Do you have an opinion with respect to the deliverability of these reserves? A. Yes, sir, I have. We have made deliverability studies on the whole Tennessee system, and in my opinion, based on the well information and number of wells to be drilled, the number of wells already drilled by the operator, that the volumes of gas which are specified within the contracts can be delivered to Tennessee.

For the first year this amount is 175 million cubic feet per day, and thereafter the contract quantity is on a reserve ratio basis.

Q. You just mentioned the figure of 175 billion cubic feet per day. At what pressure base? A. That would be on a 15,025 pressure base.

Q. Had you completed your answer? [44] A. Yes, sir. I had.

Q. How does your estimate of gas reserves compare with that of the operators for the producers involved in this proceeding? A. Well, in making these reserve estimates,

we worked along with the operator; he gave us the information, and when we made them, we agreed substantially with the operator.

Q. I take it, then, from what you said that in order to make this estimate in the first place, you had to obtain a great deal of basic information from the operators, themselves? A. Yes, sir, we certainly did, yes, sir.

Mr. Littman: Mr. Examiner, that completes the direct testimony of this witness.

I offer in evidence Exhibit No. 2.

Presiding Examiner: Is there objection?

(No response.)

Presiding Examiner: Exhibit No. 2 for identification is received in evidence.

(The document above referred to was marked Exhibit No. 2 for identification and received in evidence.)

Mr. Littman: I take it Your Honor will follow the same practice with regard to this witness' cross-examination? If so, I will call our next witness and proceed.

Presiding Examiner: Yes, counsellor.

The witness is temporarily excused.

[45] (Witness excused.)

Mr. Littman: Do you want us to proceed before the recess?

Presiding Examiner: Not necessarily. The hearing is recessed for ten minutes.

(Whereupon, at 11:15 a.m., a recess was taken to 11:25 a.m.)

Transcript of Hearing Held February 28, 1957 [Vol. I]
William W. Witmer—Direct

Presiding Examiner: The hearing will be in order.

Mr. Littman: I will ask Mr. William W. Witmer to take the stand.

Whereupon, WILLIAM W. WITMER was called as a witness, being first duly sworn, was examined and testified as follows:

Direct examination by Mr. Littman:

Q. Will you please state your name, residence and employment, Mr. Witmer? A. My name is William W. Witmer, I reside in Houston, Texas. I have been employed by Tennessee Gas Transmission Company since December, 1951, and I am Vice President in charge of the gas purchases.

Q. What is your education and experience, Mr. Witmer? A. I was graduated from the Agricultural and Mechanical College of Texas in 1948, with a Bachelor of Science degree in Mechanical Engineering, and from the Baylor University School of Law in January, 1951, with an L.l.b. degree. During 1951, [46] I was employed by the Texas Company as an attorney in the Legal Department, and since December, 1951 I have been employed by Tennessee Gas Transmission Company in various capacities involving the purchase of gas.

I have testified many times before the Federal Power Commission, supporting applications filed by Tennessee Gas Transmission Company in matters concerning gas supply.

Q. You have before you copies of the contracts between Tennessee Gas Transmission Company and the four applicants involved in this proceeding, which contracts have

been marked for identification, or have been identified as items "A", "B", "C" and "D", by reference.

Now, will you state whether you participated in the negotiation of those contracts on behalf of Tennessee Gas Transmission Company? A. Yes, I represented Tennessee in the negotiation of those contracts.

Q. Why did Tennessee Gas Transmission Company enter into those contracts? A. The purpose was to obtain gas reserves to supply the expansion of Tennessee's markets, as is shown in Tennessee's pending application in Docket G-11107. We felt that the purchase of the gas reserves covered by those contracts was particularly beneficial to Tennessee for several reasons.

First, the gas reserves are well-located, insofar as Ten- [47] nessee's system is concerned. Another factor which influenced the negotiations for this gas was that in addition to the large amount of gas reserves proven at the time of the negotiations, the dedicated acreage seemed to us to have a great potential for additional reserves which would probably be available to Tennessee as the acreage is developed in the future.

The purchase of this gas also afforded Tennessee an entry into the vast areas of prolific gas reserves situated off shore from the State of Louisiana, and in our opinion, placed Tennessee in a favorable position to acquire large reserves to be developed in the future, so that Tennessee could continue to meet the expanding demands of its markets.

In addition, it must be recognized that this was the only large package of gas for sale in the Gulf Coast area at the time. And evidently its advantages were realized by most of the other interstate gas transmission com-

panies, since the negotiations for the purchase of this gas were highly competitive among the interstate gas transmission companies in that area.

As is well known, the sale of gas reserves to interstate gas transmission companies has been very limited during the past couple of years.

Q. You have said that other transmission companies were interested in purchasing these reserves. Can you name any of the other interstate gas transmission companies which were actively engaged in the competitive negotiations for the purchase [48] of this gas? A. Yes, I can. It is my understanding that Southern Natural, El Paso, Transcontinental, United Fuel and American Louisiana were all interested in the purchase of this gas.

Q. Now, will you please explain the general terms of delivery and the dates by which such deliveries are to commence, according to the terms of the contract which you have described? A. Tennessee is obligated to construct to each of the platforms in the Gulf of Mexico, from which the gas wells have been drilled in the various fields that are covered by these contracts, and Tennessee is to commence taking gas on or before November 1, 1957.

In this regard, Tennessee is required to obtain a satisfactory certificate of public convenience and necessity covering the necessary construction for and purchase of such gas prior to or on April 1, 1957.

Now, the reason for the April 1 deadline is that the off-shore portion of the necessary off-shore construction can be accomplished only during the spring and early summer months, due to difficulties encountered from hur-

ricanes, rough weather, for the remainder of the summer and fall seasons.

So it was imperative that Tennessee be ready and able to commence construction of the gathering system not later than the early spring of 1957.

In the event satisfactory certificates are issued to the [49] applicants in these consolidated proceedings, and to Tennessee in its pending application, Tennessee stands willing and able to so construct the facilities necessary to receive and serve the gas covered by these contracts.

In the event Tennessee and the applicants in these consolidated proceedings do not receive satisfactory certificates by April 1, 1957, the contract may be terminated as provided in the contracts.

Q. Is there any affiliation between Tennessee and any of the applicants in these consolidated procedings? A. No, sir, there is not.

Q. Were the terms and conditions of these contracts which have been identified as Items A, B, C and D, arrived at as a result of arms-length bargaining? A. Yes, sir, they were.

Q. Over what period did these negotiations extend? A. We first approached these producers about the purchase of the gas covered by these contracts in October, 1955, and the negotiations continued from that time until contracts were finally executed by all the parties.

Q. Have you finished? A. Yes, sir.

Q. Do any of the provisions of these contracts affect or trigger any of Tennessee Gas Transmission Company's existing favored nations or renegotiation clauses in its other gas pur- [50] chase contracts? A. No, sir.

Q. Is any gas now being sold and delivered by any

producers in the area embraced by these contracts; namely, in the Vermillion, East Cameron or West Cameron areas off shore of the State of Louisiana? A. To the best of my knowledge, no gas is being sold in those areas.

Q. What effect will the purchase of the gas under these contracts have upon Tennessee's overall weighted average cost of gas? A. The weighted average cost of gas in 1957 to Tennessee, including the gas Tennessee is obligated to take under these contracts for the months of November and December of 1957 is about 12.71 cents per Mcf. The average cost of gas to Tennessee during 1957, excluding the gas covered by these contracts, but based on the same buying pattern otherwise, is approximately 12.54 cents per Mcf.

Q. I note the difference between those two figures is 23-hundredths of one cent; is that right? A. No, sir. The way I subtract them, it is about fourteen-hundredths.

Mr. Voight: Seventeen.

The Witness: Seventeen, yes.

By Mr. Littman:

[51] Q. You say it is what? A. Seventeen hundredths of a cent.

Q. Seventeen hundredths of a cent? A. Yes.

Mr. Russell: May I ask a question there for clarification, Mr. Littman, and Mr. Examiner?

Mr. Littman: Yes.

Mr. Russell: As I understood your question and Mr. Witmer's answer, the comparison you are making was the new gas that you are getting under these contracts being only included in your 1957

figures for the months of November and December; is that right?

The Witness: That is correct, that is when Tennessee is obligated to commence taking the gas, November 1, 1957.

By Mr. Littman

Q. Now, will you proceed to complete your answer as to the effect of the purchase of this gas, carrying the figure forward into the year 1958, which would be the first full year of operation under the application as filed in Docket G-11107 by Tennessee? A. For the year 1958, the weighted average cost of gas for Tennessee, including the gas covered by these contracts, at approximately 240 million cubic feet per day on a pressure base of 14.73 p.s.i.a., is approximately 13.70 cents per Mcf.

Using the same buying pattern and excluding the gas covered [52] by these contracts, the weighted average cost of gas to Tennessee for the year 1958 is about 12.73 cents per Mcf, making a difference between the two average costs of gas to Tennessee of approximately 97 hundredths of a cent per Mcf at that pressure base. I might add there, Mr. Littman, that those particular calculations do not reflect the possibility of price increases in other of Tennessee's contracts which do provide for price increases during the year 1958.

If those prices are allowed to increase, of course, the effect of this gas on Tennessee's average cost of gas would be smaller, percentagewise, than it is as I have given it.

Q. Will you describe generally, Mr. Witmer, what facilities will have to be constructed by Tennessee to enable it to receive the gas under these contracts and to deliver that gas into Tennessee's main transmission line? A. To build

to and receive gas from the nine existing platforms, and to put that gas into Tennessee's main line system at Kinder, Louisiana, will require 46.4 miles of 26-inch outside diameter line from Kinder, Louisiana, to the Louisiana shore-line, the cost of which, including all contingencies, will be $5,662,601.

The off-shore portion of the necessary construction to receive gas under these contracts, as the system is now designed, will be composed of 26-inch, 20-inch, 16-inch and 12-inch lines in the following amounts: 25.3 miles of 26-inch outside diameter [53] line, the total cost of which laid and in service is $6,034,508.

11.3 miles of 20-inch outside diameter line, the total cost of which placed in service would be $2,052,736.

12.9 miles of 16-inch outside diameter line, the total cost of which, when placed in service, will be $1,570,106, and 11.3 miles of 12-inch outside diameter line, the total cost of which, when placed in service, will be $995,461, making a total cost to put this gas to Tennessee's main line system, at Kinder, Louisiana, if my addition is correct, of $16,315,412.

Now I would like to reiterate here that this off-shore portion of this system must necessarily be built during the spring and early summer of 1957, due to the weather conditions.

Q. Do I understand this off-shore portion construction which you have just described involves construction of these lines which would be laid under water, extending from the shore of the Gulf, out to these nine platforms that have heretofore been described? A. Yes, sir, that is correct.

We have had experience in constructing similar facilities before in the West Delta area, which is also off the coast of

Louisiana, and in discussing this construction with our design engineers and our operating personnel, I am certain that we could construct the facilities during the spring and early summer of 1957, providing, of course, that we receive a satisfactory certificate by the time required in the contract.

[54] Mr. Simons: Referring to a certificate in G-11107, are you?

The Witness: Yes, I was, there, the Tennessee certificate.

Mr. Ryan: May I ask a clarifying question?

Mr. Littman: Just a minute. I am almost finished here, and I may be able, by these remaining questions, to supply the answers that are in the minds of the opposing counsel.

Presiding Examiner: Very well.

By Mr. Littman:

Q. Are the facilities which you have described a subject of Tennessee's pending application in Docket No. G-11107, among other facilities there applied for? A. Yes, they are.

Mr. Ryan: My question I wanted to ask went to the previous answer the witness gave. I would like to have the reporter read that answer back, if I may.

Presiding Examiner: Any objection?

Mr. Littman: I have no objection to having the answer read back.

Presiding Examiner: Very well.

(Answer read.)

Mr. Ryan: Thank you.

By Mr. Littman:

Q. As Vice President in charge of gas purchases, have you satisfied yourself that the construction and operation of these facilities which you have described is feasible from an engineering standpoint? A. Yes, sir, I am satisfied that from an engineering standpoint the construction of these facilities is certainly feasible, and as I stated before, that is based, of course, to a large degree, on our prior experience in constructing off-shore systems of this kind.

Our design engineers and operating engineers have assured me that there is nothing particularly out of the ordinary in the construction of this system, as compared to the construction of similar gathering systems in which Tennessee has participated.

Mr. Littman: That's complete—

Mr. Simons: I don't understand what is meant by feasible from an engineering standpoint. Could you explain that to me?

Presiding Examiner: Just a minute.

Are you through with your direct examination?

Mr. Littman: Yes. I have completed my direct examination, and I should think that this inquiry could very well be answered on cross-examination.

Mr. Simons: I was confused by the answer. I would be happy to go through the routine of objecting to the question as we go along—

Presiding Examiner: You may answer.

The Witness: May I have the question repeated?

Presiding Examiner: What do you mean by feasible from an [56] engineering standpoint?

The Witness: By that I mean there are no particular technical problems involved in the construction which could not be overcome by normal engineering practices. Does that answer your question, Mr. Simons?

Mr. Simons: I am not sure. You will have to forgive me, I am not an engineer. Could you give me an example of a construction which you have come across which would not be a feasible one as you are using the term, from an engineering standpoint?

The Witness: Well, Mr. Simons, we haven't attempted any that we haven't been successful in constructing.

Mr. Simons: Apparently I have some difficulty in making myself understood even as you have some difficulty in making yourself understood to me.

The Witness: Perhaps so.

Presiding Examiner: Just a minute.

Mr. Simons: Could you give me an example of a proposed construction or one that was considered by Tennessee which came before you which, you determined was not feasible from an engineering standpoint?

The Witness: Mr. Simons, we haven't any that were not feasible. Let me put it this way: I suppose the first offshore construction that Tennessee did concerned us considerably more from a technical standpoint than this one does, purely because [57] it happened to be our first attempt at that type of construction. In that regard, however, we were successful in that venture, experienced no

particular difficulty, and the system certainly seems to be satisfactory. The conditions involved in the construction of the facilities that we are discussing here are very similar to those that we have encountered in the past.

By testifying that these facilities are feasible engineeringwise, I merely wanted to make it clear that there was nothing involved in this construction that would prevent Tennessee or keep Tennessee from being perfectly able to receive gas from these platforms.

Mr. Simons: Do you mean anything other than that the construction can physically be done?

The Witness: No, I mean nothing other than that.

Mr. Simons: I think that solves my problem in that particular.

The Witness: All right, sir.

Presiding Examiner: Does that complete your case?

Mr. Littman: Yes, Mr. Examiner. That completes our testimony in this proceeding.

Presiding Examiner: I suppose, however, we may go back and start the cross-examination with the first witness.

Mr. Ryan: May I ask if that completes the case of the applicants, Mr. Examiner?

Presiding Examiner: Yes.

[58] Mr. Voight: That is correct, sir.

Presiding Examiner: Very well.

Mr. Foster: So far as we can see the situation at this time, Mr. Examiner.

Mr. Woodfin: That is correct for Tidewater also.

Presiding Examiner: Very well. The witness on the stand is temporarily excused.

(Witness excused.)

Presiding Examiner: You may tender your first witness for cross-examination.

Mr. Kirby: May I ask if this examination is going to be clarifying or cross-examination at this time?

Presiding Examiner: Cross.

Mr. Kirby: Mr. Examiner, I am sure the Examiner doesn't expect us to cross-examine, for example, the geological witness in this case, Mr. Born. We have no method of checking his exhibit that he has put in. I am just using that as a striking example of the position we would be in.

Mr. Littman: Mr. Examiner, we would not in any event expect counsel, who has just spoken, to cross-examine Mr. Born concerning the gas reserves, because his petition to intervene does not show any particular interest in gas reserves. His intervention has been limited to price, to the matters concerning price. These interveners have expressed some concern about price, and that is about all I can find in their petitions to intervene [59] that would—that concerns them.

I believe their petitions—I am sure that the Commission has limited their participation here by its order to those matters alleged specifically in their petitions to intervene.

Presiding Examiner: We will get to that when the witness is tendered.

Mr. Kirby: Mr. Examiner, I am just pointing

out again that for this examination I don't think we should be limited to our complete examination at this time for cross.

Presiding Examiner: We will get to that.

Mr. Voight: Mr. McKinley, please.

Whereupon, HOWARD A. MCKINLEY was recalled as a witness, having been previously duly sworn, was examined and testified further as follows:

Presiding Examiner: Is there cross-examination of the witness who is now on the stand, the first witness that testified this morning? Is there any cross-examination by counsel for the intervener Brooklyn Union and Long Island Lighting?

Mr. Russell: No.

Presiding Examiner: By counsel for Lake Shore Pipe Line Company?

Mr. Ryan: I have a few questions, Mr. Examiner.

Cross-examination by Mr. Ryan:

[60]. Q. Mr. McKinley, does Continental have any present intention of exercising their option to cancel this contract in the event Tennessee does not receive a certificate by April 1? A. I will say this: that we are in the position where we can hardly conceive that we would be placed in that unfortunate position. However, in the event that we find ourselves confronted with the situation where we are not to have facilities constructed by Tennessee, we will undoubtedly have to explore other avenues of approach in effecting production from these leases, which we feel must be accomplished by 1958, in which event it would probably involve the seeking after non-jurisdictional

market or some other non-jurisdictional use, and probably the construction of the line.

Q. I understand that you stated on direct examination that it was urgent that your company and the other applicants receive certificates by April 1 because of construction in the Gulf. Are you referring to construction by Tennessee? A. Correct.

Q. Or by your company? A. And by us. It is something that would have to be done by then, if we concluded that constructing a line was the route we wished to go.

Q. What construction does your company have to do to effectuate these sales? [61] A. You are asking me a question I can't answer fully, I am afraid.

Q. Do you know— A. There are certain alternatives that perhaps might be able to discover. At the present time we see no other alternative than to build the lines ourselves, if that is the answer to the question.

Q. I am assuming that Tennessee builds all the facilities required under the contract. A. Right.

Q. What facilities do you have to build? A. Sorry, I didn't understand your question.

You are talking about, I think, perhaps the construction of other platforms?

Q. Construction of other platforms or any other facilities. Are there any pipeline facilities involved? A. Well, we will have facilities on the platforms. There won't be any pipeline facilities, if I understand the term as you are using it.

Q. You said that you presently have nine platforms; is that correct? A. That is correct.

Q. How many more are contemplated within the presently dedicated acreage? A. The drilling of additional wells?

[62] Q. That is correct. A. As I recall, there are two more.

Q. So that you will then have a total of 11 platforms to which Tennessee has to build in order to pick up this gas; is that correct? A. In the event of production, that would be correct.

Q. Where is the gas metered? Where will the gas be metered in selling it to Tennessee? A. It is my understanding that it will be metered on the platforms.

Q. On the platform? And that will be metered volumetrically—let me see if I can put this correctly—the metered volume will be the volume coming out of the well directly; is that correct? A. You are getting into problems where I am going to have difficulty answering. On the technical aspects of it, these questions place me in a difficult position. I don't know whether I could adequately answer that question. I would rather pass it.

Q. You are familiar that, under the terms of the contract, the sellers of this gas have an option to extract all of the heavier hydrocarbons in excess of 1,000 B.t.u.; is that correct? A. You must remember that I said I was familiar, that I wasn't intimately connected with it, in the sense that I knew it in detail. To answer that question adequately, I would have to [63] look at the contract.

Q. Let me refer you to Section 6 of the contract. A. What page is that on?

Q. Page 11, on the copy I have. A. Yes, same here. You are talking about 6(b)?

Q. That is right, Section 6(b) and Section 6(c).

Mr. Woodfin: Mr. Examiner.

Presiding Examiner: Yes.

Mr. Woodfin: I would like to point out in this connection—I don't know quite what Mr. Ryan is trying to get at here, but the contracts speak for themselves. These are provisions which are very clear. If he is asking the witness to read the contract I would just refer to the sections in the contract and then go on to the next question. The contracts speaks for themselves.

Mr. Ryan: I think Mr. Woodfin knows very well what I am getting at.

Presiding Examiner: Let's not get into any controversy between counsel.

Mr. Ryan: The question I am trying to determine is what volume of gas Tennessee is going to get and what are they going to pay for? The contract calls for a price of 21.4 cents, but I don't know what gas that is referring to. The sellers have the right to extract certain liquids from this gas. Now, if Tennessee is paying for that gas at the platform and the seller is then later allowed to extract up to ten per cent of the volume of that gas, then Tennessee is paying for gas it is not getting. In effect, it has a very direct effect upon the price.

Presiding Examiner: It may very well have. But what can this witness do to amend the contract?

Mr. Ryan: I am not asking him to amend it. I am just—my question was: where is the gas metered? From that point I can read the contract. I want to know where the gas is metered to Tennessee, and what gas is it that is metered.

Is it the extracted gas or gas that comes out of the well?

Presiding Examiner: What does the contract say?

Mr. Ryan: I don't find it in the contract, Your Honor. If somebody would point it out to me.

Presiding Examiner: Where is the contract provision, counsel, on that?

Mr. Ryan: I didn't hear the Examiner. May I have the reporter read the question?

Presiding Examiner: Yes.

(Statement read.)

Mr. Ryan: That is my problem, Mr. Examiner.

Presiding Examiner: Just a minute. Let him have a chance to answer.

Mr. Ryan: I am sorry, Your Honor. I thought you were directing the question to me.

[65] Mr. Russell: Could we take a short recess at this point?

Presiding Examiner: No. It is not necessary. Look at page 15.

Mr. Woodfin: Section 8(a).

Presiding Examiner: I don't see how you can interrogate this witness about the contract unless you lay some foundation for the interrogation.

Mr. Ryan: Your Honor, this man isn't even familiar with the contract. He just said so.

Presiding Examiner: You haven't established that. The objection is sustained.

Mr. Ryan: May I hear what the objection was? Could the reporter please read that?

Mr. Woodfin: I made the objection, Mr. Reporter. I said the contract spoke for itself and that the provisions are actually set out, and all that Mr.

Ryan was asking was that this witness should read the provisions of the contract into the record.

I think you will find that in the record, Your Honor.

By Mr. Ryan:

Q. Are you familiar with the take-or-pay-for provisions of this contract—of these contracts? A. I am familiar in a general way, yes.

Q. Am I correct in interpreting the contract that the take-or-pay-for is eighty per cent of the contract quantity?

[56] A. You are referring to the initial take-or-pay?

Q. Referring to paragraph 3(a). A. 1, 2 or I(2)?

Q. 3(a), I(2), that is correct, that is at the end—from and after January 1, 1958. A. From and after when?

Q. Excuse me, November 1, 1958. A. From November 1, 1957, until November 1, 1958, the take is or will be the lesser amount of 175,000 Mcf, or four-fifths of the maximum efficient rate of flow of these wells.

Q. That is the contract quantity, is that not correct? A. For that period, yes.

Q. For that period. From and after that period the contract quantity is 1,000 Mcf for every eight million Mcf of recoverable gas originally in place; is that correct? A. Correct.

Q. I am referring to Section 3-D-3, which provides quantity which buyer must either take or pay for. Am I not correct that that is eighty per cent of the contract quantity from and after November 1, 1958?

Mr. Voight: Pardon me, will counsel repeat his reference to the section?

Mr. Ryan: The Section is 3-D-3.

Mr. Voight: As I read the statement to which counsel is referring, is the total quantity equal to 125 per cent of the [67] contract quantity hereunder, and 3-D says "Buyer shall have the right to purchase and seller will install, maintain and operate necessary delivery facilities to deliver."

I think that refers to additional quantities. It has nothing to do with the question. For that reason we object to the question, sir.

Presiding Examiner: Very well.

Mr. Ryan: I will have to come back to that, Mr. Examiner.

By Mr. Ryan:

Q. Mr. McKinley, are you familiar with the other contracts which your CATC group has with Tennessee in the West Delta area? A. That one only in a very general way. My concern there would be with the leases affected, primarily, and the fact that they were being taken care of. As to the general terms of that contract, I only have a very general knowledge.

Q. You wouldn't know if the terms are similar, different or identical? A. I wouldn't know that.

Q. Do you know what the price is under that other contract? A. As I recall, it is 17 cents.

Q. Is that located off shore? A. It is located off shore but about 200-some odd miles away, over in the West Delta area.

Mr. Foster: May we inquire to counsel with respect to [68] the purpose he has in mind in pursuing these questions?

Mr. Geneau: In that connection, Mr. Examiner, this contract very definitely makes provisions—

Presiding Examiner: Will you please stand?

Mr. Geneau: —very definitely makes provision for the sale, apparently, of some gas from the West Delta area to be sold under the terms of this contract. So Staff is concerned with that problem also.

Presiding Examiner: Where do you find that?

Mr. Ryan: That is on page 7, Mr. Examiner.

Mr. Geneau: That is Section 3-J, Mr. Examiner.

Mr. Littman: May I have that section again?

Mr. Geneau: That begins on pages 6 and 7 of my copy of the contract.

Mr. Littman: What is the section number, please?

Mr. Geneau: 3-J.

Mr. Littman: 3-J?

Mr. Geneau: That is correct.

Mr. Voight: If Your Honor please, I think that Subsection 3-J speaks for itself. It is a substitution provision that says that up to a maximum of 25 per cent of 50 million a day may be delivered under this contract if the seller is prevented from delivering similar quantities from the reserves dedicated in the West Delta area. It is a substitution provision, but it doesn't say West Delta gas shall be sold. It is protecting [69] Tennessee for failure to deliver West Delta gas.

Mr. Geneau: That is the one thing we wanted to know.

Presiding Examiner: Now, we will come to Staff in the regular order.

Mr. Geneau: Yes, sir.

Mr. Ryan: You want to know the relevancy of my question?

Presiding Examiner: You are responding now to counsel's inquiry.

Mr. Ryan: The relevancy is this, Mr. Examiner. The West Delta contract is between the exact parties who are involved here, it is the only other off-shore contract that I know of between these parties. I think it is a perfect basis of comparison, find out what is the basis for the price in this contract. No evidence has been put in by the applicants. The applicants haven't put in evidence on anything that I can see.

Mr. Foster: May I be heard on that, Mr. Examiner?

Presiding Examiner: Yes.

Mr. Foster: It is our position, Mr. Examiner, that the decisions of the Commission make it abundantly and transparently clear, first, that there is in a certificate proceeding such as is before us here no issue and none can be injected with respect to the justness and reasonableness of the rate in the contract involved in the certificate application being considered.

[70] In other words, the Commission has said, as I understand its most recent decisions, very clearly, that it will not permit a Section 7 proceeding to be converted into a rate case under Sections 4 and 5.

Now, apart from that, Mr. Examiner—

Presiding Examiner: Where did the Commission say that?

Mr. Foster: Most recently, Mr. Examiner, as I

read its decisions, in three places recently. The first one, Mr. Examiner, was the order and opinion issued in Docket No. G-4250, Natural Gas Pipe Line Company of America, Opinion No. 299, which was issued the latter part of December or in December, as I remember it, of last year.

Soon after that, in the Houston-Coastal proceedings, Opinion No. 301, Docket Nos. G-9262, et al., Houston Texas Gas and Oil Corporation et al.

Still more recently, Mr. Examiner, in the Commission's order issued denying applications for rehearing on the first of the two cases to which I made reference.

And as I understand those, Mr. Examiner, and most particularly the last one, the Commission had very clearly made that plain. I shall respectfully refer to the Examiner's attention one sentence. This is from the order denying application for rehearing, issued January 31, 1957, in the Natural Gas Pipe case.

Presiding Examiner: I don't think you have to read that. [71] I will take a look at it at the luncheon recess. There is no question pending.

Mr. Foster: I had understood there was.

Mr. Woodlin: No question is pending.

Presiding Examiner: There is no question pending.

Mr. Foster: There is a question raised as to the relevancy.

Presiding Examiner: You were asking him a question about the line of his inquiry.

Mr. Foster: Yes, sir.

Apart from that, Mr. Examiner, just in order to make our position clear on that to Mr. Ryan, if I may proceed for a moment, Mr. Examiner, the counsel's inquiry ran to the matter of comparability, as I understood him, which he may seek to distinguish from the question as to justness and reasonableness.

Presiding Examiner: He may not pursue that any further.

Mr. Foster: I am fully aware of that, yes, sir. I think it might be helpful, though, to him and to all of us—

Presiding Examiner: I don't think we had better pursue that, from your viewpoint, unless he continues the line of inquiry.

Mr. Foster: I shall desist, then, Mr. Examiner.

Mr. Simons: May I note my disagreement with Mr. Foster's interpretation?

Presiding Examiner: Let's proceed with the cross-examination.

[72] Mr. Ryan: It is obvious, Mr. Examiner, that this witness doesn't know anything about the West Delta contract, so there would be no point in my pursuing it.

Presiding Examiner: All right.

Mr. Ryan: This next question may be more appropriately directed to counsel. Starting on page 7 of the contract, Article 4, there are provisions relating to dedication of acreage. Subparagraph A of paragraph 4 provides for the dedication of 25 per cent of two trillion cubic feet as the amount dedicated under this contract at this time.

Subsequent subparagraphs of that paragraph 4 provide for an option to the seller to dedicate additional gas. I would like to know what the applicants, in that connection, what the applicants are requesting certificate authority for in this case.

Mr. Woodfin: If I might respond to that on behalf of Tidewater, we have shown no exercise of the election of any option. We are asking for a certificate to make the sale under the terms of this contract, in accordance with its provisions. Up to this date there has been no exercise of any option. I don't think we even get to that question, and there is no sense worrying about it in this proceeding.

Right now the dedication is two trillion feet of gas in these proceedings, and Tennessee has shown, in the present stage of development, there is already 1,600,000,000 shown [73] there.

Mr. Ryan: Is it counsel's view that any certificate issued here would cover the possible dedication of additional acreage?

Mr. Woodfin: I don't have any view on that, Mr. Ryan, I am not to that point.

By Mr. Ryan:

Q. Mr. McKinley, Article 6-B refers to U. S. Highway 90 in Jefferson Davis County or Calcasieu Parishes, Louisiana. Could you perhaps, on Exhibit 1, show me, approximately where that point would be? A. It will about split Calcasieu Parish and Jefferson Davis. It runs from Lake Charles to Lafayette.

Q. Do you have any idea how far on shore that is from

these leases? A. It would be an estimate. It would be about thirty miles.

Q. About thirty miles? A. As an estimate.

Q. How far out into the Gulf are these leases, Mr. McKinley? A. They run from 25 to 30 miles out. I have in my briefcase precisely the measurements on each lease if you are interested in that.

Q. No, approximately. A. It is approximately a 30-mile average. In some places [74] it is less.

Q. Do you know anything about the physical characteristics of the gas which will be produced from these leases? A. I do not.

Q. Presumably you wouldn't know what volume of gas might be permissibly stripped by the sellers before it is ultimately delivered to Tennessee, then? A. No, I would not. Incidentally, going back to that distance question again, I would like to retract what I have said. That would be closer to between 15 and 25 miles. Take yourself an average on that. I was counting the blocks and I miscounted them.

Q. For the record, Mr. McKinley, on page 20, would you refer to the paragraph referring to the State of Louisiana or Federal Government taxes?

Mr. Voight: Is that in Section 10?

Mr. Ryan: That is in Section 10, that is correct.

By Mr. Ryan:

Q. Do you have that before you?

Is there any tax now imposed by the State of Louisiana with respect to this gas? A. There has been no production as yet.

Q. Is there any tax which will be applicable to this gas

when production commences? A. Assuming that these are state leases there would be [75] the normal state production tax.

Q. Assuming that— A. Some of them are state leases and others are not, obviously.

Q. Assuming they are Federal leases, what is the situation with respect to taxes? A. There is no tax in the normal sense that one would find—to my knowledge, as one would find in the case of State of Louisiana's rate schedules on taxes.

Q. Is there any equivalent which is referred to here which must be paid by Tennessee to the seller? A. There is an equivalent in the sense that there is an additional royalty applied on Section 6 leases in the amount of Louisiana gross production taxes, as of the passage of the Act in August of 1953.

Mr. Ryan: May I have that read back, please?

Presiding Examiner: Yes.

(Answer read.)

By Mr. Ryan:

Q. I am not sure I understand that. A. I am not sure, either.

By Mr. Ryan:

Q. Assuming that these are Louisiana leases, what is the amount of that tax? A. I am not familiar with the scale as of right now.

[76] Q. Assuming that they are Federal leases, what is the amount of the equivalent? A. It would be as it existed at the time of the passage of the Act.

Q. What Act are you referring to? A. The Outer Continental Shelflands Act. The schedule at that time, of course, depends on the wells themselves, and I am not that familiar with the tax schedule as of that time.

Q. Assuming that these are Louisiana leases, what royalty does the State reserve to itself? A. These are one-eighth leases.

Q. Would the same be applicable if they were considered Federal leases? A. One-eighth plus the additional royalty.

Q. Would you refer, please, Mr. McKinley, to Section 3-J, on pages 6 and 7?

On page 7 is the phrase "which seller is then prevented from delivering to buyer." Could you explain to me whether that means which seller has been prevented prior to the substitution or which seller will subsequently be prevented from delivering from the West Delta area?

A. You are asking me a point of interpretation. I am afraid I couldn't answer that adequately.

Q. Under Article 7, Mr. McKinley, on page 13, "Seller agrees that the gas will have certain qualities upon delivery." [77] Would you explain to me whether that means upon delivery at the platform or upon delivery on shore, after extraction of hydrocarbons by the seller, on shore, after extraction of hydrocarbons by the seller on shore.

Mr. Voight: If Your Honor please, if counsel will be kind enough to read the balance of the contract, we would like to say that these contracts have been on file with the Commission for approximately six months. 8-B says: "The points of delivery for all gas delivered to buyer hereunder

shall be at the valve on the discharge side of seller's meter to be located on each of the platforms."

I believe that the contract speaks for itself, and there is no purpose to be served by asking the witness what the contract says. We object to that question.

Mr. Ryan: Your Honor, it seems to me, in light of counsel's statement, that there is a conflict in the contract. The seller has the right to extract hydrocarbons on shore. If that is the situation, and the seller is only guaranteeing 1,000 B.t.u. gas at the platform, it seems to me it is in conflict.

Presiding Examiner: Very well.

Did you negotiate the contract on behalf of Continental?

The Witness: No, I did not. However, from the very beginning it was on the basis of the advice of the Legal Department and the Land Department that this contract—not the contract, [78] but the sale of this gas was initiated, and during the entire negotiation we were in and out of it. The technical phases of it, the price aspects of it didn't fall in my province. However, we were in and out of the negotiation at one time or another throughout its entirety.

Presiding Examiner: You can't answer this question?

The Witness: I don't believe I can.

Mr. Ryan: Under those circumstances, Mr. Examiner, I have no further questions of this witness.

Presiding Examiner: All right. Cross-examination by counsel for Public Service Electric and Gas Company.

By Mr. Kirby:

Q. Mr. McKinley, just in what position are you testifying here, as the manager of a certain department, the CATC Department? A. No; I am testifying as Regional Land Superintendent, Continental Oil Company, with the authorization to speak for Continental Oil Company.

Q. In that position do your duties require you to become familiar with the various contracts of sale of the gas of Continental? A. Only insofar as they will touch a particular lease and the obligations that might fall within the province of the Land Department.

Q. That department, I take it, is only concerned with the [79] offshore section? A. That is correct.

Q. I didn't catch it in your qualifications, but I take it you are an engineer; is that right? A. No, I am not.

Q. When you testified, then, that the four companies were ready, willing and able to perform, I assume you based that on hearsay; have you? Especially the "able" part? A. Well, I hardly think it was hearsay. My statement was based on the advice that I was given, and if you classify that as hearsay, I guess that is hearsay.

Q. What I mean is, you didn't make a personal examination of any engineering plans as to how the gas was to be secured— A. No. If I did, I wouldn't be sure at what I was looking at.

Q. You do know, of course, I assume, that these applicants have other outlets for sale to interstate pipelines; is that correct? A. Throw that question again.

Presiding Examiner: Yes.

(Question read.)

Mr. Woodfin: May I interpose an objection? I never heard of a clarifying question to a question on cross-examination, but that is about what it is. Does he mean from these leases, [80] or leases located elsewhere? I don't quite understand what his cross-examination is, Mr. Examiner.

The Witness: That is my feeling, too. Well, I am not following you.

Presiding Examiner: Just a minute.

Counsel?

Mr. Kirby: To clarify the question to counsel, I meant before that applicants are making other sales to interstate pipelines, and the reason I asked this question of the witness is that he did mention something on direct-examination that they were going to look for other outlets at a certain time, being April 1—

Presiding Examiner: The objection is sustained.

The hearing is recessed to reconvene in this room at 2 p.m.

(Whereupon, at 12:32 p.m., a recess was taken to 2:00 p.m.)

[81] AFTERNOON SESSION 2 P. M.

Presiding Examiner: The hearing will be in order.

Whereupon, HOWARD A. McKINLEY resumed the stand as a witness, having been previously duly sworn, was examined and testified further as follows:

Presiding Examiner: Do you have further questions on cross-examination?

Mr. Kirby: Just a few questions, Mr. Examiner.

Cross-examination (Cont'd) by Mr. Kirby:

Q. When you said there was no connection between the applicants here and Tennessee, and among themselves, were you speaking of such things as stock control possibilities or stock interests or interlocking directorates; is that what you had reference to? A. That is what we had reference to, that is what I had reference to.

Q. What investigation did you make to determine that, in your opinion, there was absolutely none? A. The investigation made was this: that we inquire of the companies, in my case, for instance, Mr. Dominic, who is Secretary for Continental Oil Company, gave me a statement to that effect, which I have with me, if you will. And I have been informed similarly by Tidewater, Cities Service Production [82] Company and the Atlantic Refining Company.

Q. And what did you do with respect to Tennessee? A. With respect to Tennessee, I have been advised they have no interest in us, through Mr. Dominic and the others, and our interest in them, the same thing.

Q. Mr. Dominic is what? A. He is Secretary for Continental, and I have been advised by the other companies similarly.

Q. Now, do I take it that you are testifying for the four

applicants as what we would term the policy witness? A. Testifying for Continental as such, yes.

Q. With respect to Continental—

Mr. Woodfin: May I make the statement on the record that we propose to adopt the testimony of Mr. McKinley, for these policy matters; that he is also speaking for Tidewater as our witness in this case.

Mr. Foster: I think, as is obvious from earlier statements, that would likewise be the case with respect to the other two applicants.

By Mr. Kirby:

Q. Then if the Commission should issue certificates in these two dockets conditioned upon Tennessee receiving a certificate, would that be satisfactory to you and to the other companies? A. That would be a difficult question for me to answer, [83] of course, not seeing what the conditions might be. But as you spell it out, we would have to look at it, I am sure, and it would be a matter for decision at that time.

Q. You mean that you would have to consult with the companies involved before you could determine the answer? A. I would say that would be a fair answer.

Mr. Kirby: I have no further questions.

Presiding Examiner: Counsel for the New York State Public Service Commission.

By Mr. Simons:

Q. Mr. McKinley, you stated you attended St. Lawrence University and Oxford University. Did you receive any

degrees from those institutions? A. I received one from St. Lawrence, two from Oxford.

Q. I am sorry. A. Received one from St. Lawrence and two from Oxford.

Q. What were those degrees in? A. Bachelor of Arts from St. Lawrence, and I am assuming what you want is the major field of concentration?

Q. Yes. A. I would say in that instance Political Science. And essentially the same might be said of the degrees from Oxford. They are, again, BA and MA concentration, Political Science.

The way their degrees are set up over there, you concentrate in a certain field, it is politics, economics and philos- [84] ophy. The concentration would be, in our terminology, as we see it, political science. Is that what you wanted?

Q. Yes. Now, you stated that you have been with Continental for five years, I believe, and that you are now Regional Land Superintendent of the marine unit, CATC region; is that correct? A. Regional Land Superintendent of the CATC Marine Region, correct.

Q. What are your duties in that regard? A. My duties in that regard relate specifically to the leases, themselves, from the acquisition through to and including the development of them and the disposition of them at the end of their usefulness to us.

Q. How many people do you have working under you as Superintendent? A. Fifteen.

Q. Fifty? A. No, 15.

Q. I am sorry. To whom do you report in the company? A. My initial supervisor or immediate supervisor is the Exploration Manager for that region.

Q. What is his name? A. Mr. John H. Davis.

Q. You stated that your duties pertain to the leases [85] from the time of their acquisition, onward. Could you spell that out a bit further, just what your department does? A. This is a problem land people have in almost any instance, trying to put it in such a manner, truncated, so that we could get it over in something less than three days. Let's take one instance, one lease: We purchase a lease from let's say the Federal Government in a particular lease sale, the preparations up to that, to and including the clearing of what title problems we have, to and including the preparations for the sale, itself, to and including the actual preparation of the bid is conducted and carried on by the Land Department.

We acquire the lease, and from there on, if we have a joint interest operation through a working interest basis, we negotiate the contract. We are responsible for seeing that lease is taken care of in the sense that as in this case, where we are compelled to face up to a possible risk, at that point we are in constant consultation with our Legal Department, and at that point we make our recommendation through the Manager of Exploration to our management, and that would include, as a counterpart measure, to the Production Department as well, that we feel, in light of the circumstances, something has to be done with this lease.

Now, our duties in addition to that are extraneous to the leases, not actually, but we carry on the so-called scout- [86] ing function, we carry on the statistical aspect of it, we carry on the maintenance of contacts with the various Governmental agencies involved, and here there are a number, and that sort of thing.

Is that sufficiently confusing?

Q. I think that is a start. I will see if I can go a bit further. What essentially is the nature of your unit? I take it it is not a legal proposity. Is it engineering or political, or just how would you ... orize it? A. My unit by that you mean the land group.

Q. Yes, of which you are the supervisor or superintendent, rather. A. Well, I would categorize it in this way, that we have the supervision over the leases. That generally would be the way I would put it to anyone.

Q. Are the people who work there engineers? A. No, they are not, they are generally—well for instance, typical would be my assistant, who is a graduate of the University of Colorado, Denver Law School and Harvard Business School of Administration. That is the type of man that is involved.

Q. But you are not a legal unit? A. Not a legal entity. When we want a legal question answered, we go to our Legal Department.

Q. And in the acquisition of the lease, is your legal [87] unit also involved in that? A. They may be, in the event there is a title situation which needs looking into. They may be in the event that there is some question as to the manner in which a lease has been advertised by either the state or the Federal Government.

Q. Who determines whether or not a particular lease should be acquired? A. That is a joint determination.

Q. By whom? A. Within Continental.

Q. Is that someone at a higher level than you? A. No, not necessarily. Of course, they can overrule our recommendations, but we are the ones that come up with the recommendations, in any event, and then it would go on up. It is a discussion on various levels.

Q. Are you responsible for the initial recommendation that a specific lease be acquired? A. The Exploration Department, of which I am part, is responsible for that.

Q. Would it more specifically be the responsibility of Mr. John H. Davis? A. You would say that he had the overall supervision of the group that developed the recommendation. It wouldn't necessarily be his alone; that is, the recommendation.

Mr. Woodin: Mr. Examiner, I haven't objected to this [88] long line of questioning. I am very curious as to what Mr. Simons is attempting to prove here. Mr. McKinley has testified that he is authorized to appear here and testify as the policy witness on behalf of Continental and on behalf of these other companies. Now, if Mr. Simons is attacking his precise qualifications as to any particular portion of the testimony, we will be very happy to take the time to bring any witness here which will satisfy him. But I just don't quite understand this line of questioning.

It seems to me that it is interesting, but it is certainly time-consuming.

Mr. Simons: It has only consumed about five minutes so far, Mr. Examiner. I would think that you can always examine any witness' qualifications.

Presiding Examiner: Objection is overruled.

By Mr Simons:

Q. How long have you been regional land superintendent of this particular unit? A. This unit has been in existence for 18 months and I have been its regional land superintendent for that length of time. However, previous to that,

and for virtually all my experience in the Land Department we have been involved in their off-shore activities which would include these properties, and in addition, other properties.

Q. What was your title immediately prior— [89] A. Division Land Superintendent.

Q. What is that? A. Division. It was at that time on a divisional level. At that time, in addition to the C.A.T.C., as we call it, or the Continental-Atlantic-Tidewater-Cities Service properties, we, within Continental, handle the other properties that we had off-shore.

Q. The particular leases that we are talking about, the area of which is covered by the map which is Exhibit No. 1 here, those leases run to each of the four applicants: is that correct? A. That is correct.

Q. And your responsibility as an officer of Continental would simply be as to the one-quarter lease interest? A. My responsibility goes a little further than that. Under the contract we have assumed the role as operator of these properties, and as such, we have to carry on in that role as well.

Q. When were the leases originally obtained? A. They were obtained, I think, as I recall—I can give it to you specifically, I have it in my brief-case—

Q. If you would, please. A. I can give it to you from memory. They were two or three sales; one of them I notice here is the May 10th, '48 sale. There was one in February, as I recall.

[90] Q. February what year? A. Wait a minute, let me determine that.

Q. Certainly, take all the time you need. A. November 19, 1948, May 10 of '48, March 15 of '48, July 19 of '47. I had a recollection there was one in February.

Q. Now you speak of a sale. Are you referring to a lease from the State of Louisiana to Continental as a sale? A. A sale conducted by the State Mineral Board at Baton Rouge.

Q. And that is how you obtained your lease? A. That is correct.

Q. Now, you gave four different dates from July, 1947, to November, 1948. Were those all sales to Continental? Or did they include others? A. Yes, they did.

Q. Did each of them include others? A. Yes, sir.

Q. Do each of the four sales relate to a different area? A. They would relate to a number of areas. I don't recall offhand how many areas were involved in each of the sales. My recollection is this: that the only sale that pertained to a single area was the very first sale in '45, which pertained only to the Eugene Island area. Only one participant in that—Magnolia Petroleum, but all the others involved more than one area and more than one participant in the sale, to my recollec- [91] tion.

Q. I take it that you were not with the company, with Continental, at the time Continental and the other applicants acquired these leases? A. That is right.

Q. From the State of Louisiana? A. That is correct.

Q. I believe you stated that you had been authorized by Continental to appear here. Who in Continental, what officer authorized you? A. Mr. O. L. Fisher, Vice President and General Manager of Continental's Southern Region.

Q. I believe you stated you were authorized to appear as the policy witness. Was that the specific authorization given to you by Mr. Fisher? A. Mr. Fisher authorized me

to appear on behalf of Continental Oil Company. He didn't put in the words "policy witness", as I recall.

Q. What specifically did he authorize you to do? A. He didn't put any limit on it.

Q. Now, you stated at one point that company counsel advised you that the leases must be on production by 1958 or they may be lost; is that a correct paraphrase of your testimony? A. They may be in jeopardy, yes.

Q. They may be in jeopardy. But all that you know about [92] that, then, would be the advice the company counsel has given you? You are not a lawyer, I take it, you would not be able to pass on that? A. If you want to put it that way, I will go along with you. However, in most of these instances the answers we get back from the Legal Department come from questions that are derived or generated in our particular section.

Q. The question— A. Not in all instances.

Q. The question might generate from your department, but the answer would not? A. That is correct. We are advised by them.

Q. What responsibility did you have in connection with the negotiation of the contract between Continental and Tennessee Gas Transmission Company which has been marked as Item "A"? A. The responsibility I had in that instance was a joint one with the Legal Department, in that we advised our Production Department and our management that these leases might be in jeopardy during the year, or by 1958 if they were not on production.

When it got into a situation where we wished to take steps to ensure production by 1958, my responsibility was to develop the leases that would be in the category of jeopardized. That was my responsibility, and we carried

on through with the various information needed on the type of lease, and that sort [93] of thing.

Anything relating to the lease we supplied them with. It was our primary concern to get those leases on production.

Q. You felt that you were under pressure because of the advice counsel had given to you, to get them on by 1958; is that correct A. That is quite correct.

Q. But you have no responsibility for entering into gas sales contracts? A. That is outside of the province of the Land Department, that is correct.

Q. Do you know who in the company has that responsibility? A. In this particular instance the man who negotiated this contract was Mr. Harold E. Vaughn; at that time he was Superintendent of Natural Gasoline Operations. He is no longer with the company. The natural gasoline people would be the ones.

Q. The natural gas? A. Natural gas, I believe that is correct; isn't it? The title. Gasoline and gas.

Q. In any event, it would be some other department? A. That is correct.

Q. So that it would be your responsibility to tell the Natural Gas Department that such and such gas ought to be sold and that terminated the interest of your particular department? [94] A. No, it didn't.

Q. Well,— A. We would tell them that it should be sold, but our responsibility didn't cease when we told them that. It was our responsibility to keep after them to see what we were going to do with them.

Q. Your responsibility, then, was to make sure that they followed through? A. Exactly.

Q. But you didn't do the following through? A. No, it wasn't my responsibility to see what they were going to do. It was to see that they did something.

Q. I take it that you had no responsibility for the particular wording of any of the contract provisions; is that correct? A. That is correct.

Q. And that your principal interest in the contract would relate to dates, as to when people are required to go ahead? A. That would be our principal interest.

Q. Now, sir, I believe that in response to a question from your own counsel you stated that if satisfactory certificates are issued, Continental would be ready, willing and able to perform. Who in the company is to determine whether or not a certificate is satisfactory? [95] A. That would be a joint effort. And it would be a management decision.

Q. Would it be your responsibility? A. No, it would not.

Q. Would it be the responsibility of your department? A. No, it would not.

Q. Which department would it be the responsibility of? A. Again it would be a management decision. No particular department.

Q. I take it, then, advice might be received from several departments? A. Yes, including ours.

Q. Including yours? A. Yes.

Q. Would your advice pertain to anything other than time? A. No.

Q. Now, I believe Mr. Kirby may have interrogated you about this, but my notes are not as complete as they might be. Insofar as your statement that the company will be ready, willing and able to perform upon

issuance of a satisfactory certificate, that statement is based on information you have received from others in the company, rather than from something that is the responsibility of your department? A. My response to the question was based on my knowledge of what the company is able to do from a financial point of [96] view. Whatever the recommendation would happen to be of the Operating Department, there wouldn't be any question in my mind, it would seem, on the basis of what we have financially to carry out whatever that recommendation might be. That was the basis for my response.

Q. You know the company has got a lot of money, in other words? A. I hope they do.

Q. And insofar as you stated that was also true of the other three applicants, that was based on your understanding that those three companies each have a lot of money? A. Yes, they have considerable money, yes.

Q. Do your duties also cover the West Delta area? A. Yes.

Q. Are you familiar with Section 3-J of the contract? There were some questions about that earlier. A. You mean the 50,000 from West Delta business?

Q. Yes.

Do you know whether, if Continental should deliver under this provision gas from the West Delta area, pursuant to Section 3-J, what the price charged would be, whether it would be the price under this contract or under the West Delta contract?

Mr. Ryan: May I have that question read back?

The Witness: I would like it also.

Presiding Examiner: Very well.

[97] (Question read.)

Mr. Voight: If Your Honor please, we have to object to that question, because a simple reading of this one sentence by counsel will show that there is no provision whatsoever for delivering gas from the West Delta area under this particular section.

Presiding Examiner: He doesn't mean it that way.

You don't understand the question to mean that, do you?

The Witness: No, I don't. I don't understand what is in here—

Presiding Examiner: You answer and state on what basis you are answering.

The Witness: As I understand you—now correct me—

Mr. Simons: Perhaps I misstated what this says.

The Witness: I am not quite sure I understand what you are leading up to, that is my problem.

By Mr. Simons:

Q. Counsel stated that a simple reading of this—

Presiding Examiner: Just state your question.

Mr. Simons: I am having some difficulty, so I will turn either to counsel or to the witness and ask this question:

By Mr. Simons:

Q. Could you explain to me what 3-J means, how that would operate? Perhaps I can get back to my other question after that. [98] A. Three-J, as I understand it, you are getting into the technical phase of the contract, itself.

and as far as I am concerned, the contract stands on itself. However, as I understand it, it is a protective clause which would relate primarily to the Tennessee—it might be, Mr. Witmer could shed a little more light on that than I.

Q. Let me phrase it this way: If this provision provides that Continental may deliver gas from the reserves that are involved in this present proceeding to Tennessee in place of gas which it would otherwise deliver from the reserves involved in the West Delta area, if that is what the provision means, do you know what price would be charged? Would it be the price here or the price in the West Delta?

Mr. Voight: If Your Honor please, we object to that question, it is based upon a supposition which is contrary to fact. If this provision means something, then what will happen? This provision doesn't say that it is delivering gas instead of; it says that if it is prevented from delivering gas under another contract, Tennessee can get the gas from this area.

Mr. Simons: I will accept counsel's interpretation of this for the purpose of this question, and my question would then be: If Tennessee does take that gas, what price do they pay?

The Witness: I would assume if it came from this here, they would pay the price called for under this contract. That is an assumption on my part.

[99] By Mr. Simons:

Q. Now, would you turn to Section 6-B? This was the question about which Mr. Ryan interrogated you earlier. A. 6-D was that?

Q. 6-B. If you don't know the answer, I certainly would accept that as a response. Does this provision mean that the ten per cent reduction in gas would occur after it is metered, after the point of delivery? A. Again, you are getting into the technical phase of the contract and I would prefer to let the contract speak for itself. I am not prepared to answer that one, I say, I don't know.

Q. Sometimes when a contract speaks for itself, it doesn't speak very clearly. A. That is a verity.

Presiding Examiner: All right.

By Mr. Simons:

Q. I take it, then, that your answer is that you don't know? A. I would rather refer to the contract, that is a technical question.

Q. I believe you stated that Continental is the operator with respect to the contracts involved here and the leases involved here. Has that been true ever since the leases were first granted or obtained? [100] A. Correct. They haven't been operating agreements, in effect, but in effect, Continental has been the operator for the C.A.T.C. companies.

Q. Is that as a result of an agreement between the four companies, rather than as a provision of the lease? A. That is a result of an agreement between the four companies.

Q. But there is nothing in the lease, itself? A. In the lease, no, it doesn't say that.

Mr. Simons: I think that is all I have, Mr. Examiner.

Presiding Examiner: Staff Counsel?

Mr. Geneau: Yes, Mr. Examiner.

By Mr. Geneau:

Q. Mr. McKinley, the application of Continental in the instant case refers to the contract between Tennessee and Continental, which it Item "A", as the contract dated August 17, 1956, as amended. Have there been any amendments to this Item "A"? A. There have been some letters of interpretation and some contingency letters, but I wouldn't say there are any letters that would relate to price or any such matter as that.

[101] Q. In other words, Item A represents the complete contract and the only contract in existence between the parties concerning this particular gas? A. If you would interpret the letters as being contracts, I would say no. However, if you do not, I would say yes; that is correct.

Q. Are the letters contracts or amendments to this contract? A. No, I wouldn't—as I say, they are contingent propositions, or they are interpretive propositions, but they do not amend it in the sense that they change the terms of this agreement. At least, that is my reading of them.

Q. They don't change the terms in any manner whatsoever, then? A. Insofar as price is concerned, and other matters, as I read them, they are not, they are interpretations of what is in the contract or contingency letters.

Q. What sort of matters do these letter negotiations go into? A. I have a note here.

There is a contingency letter which involves favored nations and redetermine clauses, in the event it is determined that this group does not have jurisdiction.

There is a letter interpreting the phrase "liquid hydrocarbons," and there is a transportation letter which relates [102] to production in excess of two trillion. And there is a tax letter which is an interpretive letter on our tax portion of this contract. There is a pipe agreement which is a seller's opinion, and it is again a contingency letter.

Does that answer your question?

Q. Yes, it does, Mr. McKinley.

I wonder how we could obtain copies of those? They seem to be rather relevant to the contract: As a matter of fact, they just might clear it up beautifully and do away with all ambiguities.

Mr. Voight: If your Honor please, I don't believe the witness made clear that the contingency of that favored nations is that if this is not subject to the jurisdiction of the Federal Power Commission then another provision shall apply. There is no question here of the sale being under the jurisdiction of the Federal Power Commission. That contingency cannot apply as long as it is subject to the Federal Power Commission. So it cannot be material in this particular matter.

Mr. Geneau: If that particular letter so says that I would be tempted to agree with you.

Mr. Voight: That is what he meant by—he said contingent on jurisdiction, or something like that. He was speaking so low I am not sure whether you got the answer.

The Witness: Can you hear me?

Mr. Geneau: But we are still desirous of seeing them, Mr. [103] McKinley. You mentioned a letter concerning hydrocarbons. Now, there is very definitely a provision in here dealing with the transportation of—

Presiding Examiner: He wants to know if he can see them. Have you got them?

The Witness: They are available; I have.

Mr. Woodfin: Of course he can.

Are copies of those amendments going to be made available to other parties in this proceeding?

Mr. Voight: They are not amendments. They are supplemental letters.

Mr. Ryan: Your Honor, I would like to see those, if we may.

Presiding Examiner: When your time comes for further cross-examination you may ask to see them.

Mr. Ryan: Are we off the record, Mr. Examiner?

Mr. Voight: I think so.

Presiding Examiner: Staff counsel is examining the letters. How much time do you expect to take, counsel?

Mr. Geneau: Could we have five or ten minutes, Mr. Examiner?

Presiding Examiner: The hearing is recessed for five minutes.

(Whereupon, at 2:45 p. m., a recess was taken until 2:50 p. m. of the same day.)

[104] Presiding Examiner: The hearing will be in order.

Mr. Geneau: Mr. Examiner, staff would like to

have these copies of these supplemental amendments—not amendments, instruments—made a part of the record in this proceeding. They are explanatory of many phases of the contract involved.

Presiding Examiner: Can any of them be eliminated on the contingency basis?

Mr. Geneau: No, Mr. Examiner, we think not.

Presiding Examiner: How many pages to each one?

Mr. Geneau: Some are very short, Mr. Examiner.

Presiding Examiner: Do you have any diagrams? I was thinking of having the reporter set them out in the transcript.

Mr. Geneau: I think there is one diagram attached.

Mr. Voight: There are ten pages involved plus one diagram.

Presiding Examiner: Isn't the diagram the same as Exhibit 1? Is the diagram that is attached to one of the documents the same as Exhibit 1?

Mr. Voight: It includes—yes, it is the same as Exhibit 1.

The Witness: It is the same in that it covers the same area.

Mr. Voight: It covers the off-shore area.

Presiding Examiner: Does it show anything that Exhibit 1 doesn't show?

[105] The Witness: Yes, it does.

Presiding Examiner: Is it essential?

Mr. Voight: Yes, it is.

Presiding Examiner: Is the line referred to in the document? Does it add anything to the operative terms of the letter?

Mr. Voight: If Your Honor please, could we have copies of the diagram made and have the letters copied into the record?

Presiding Examiner: That would add a little confusion.

Do you have any objection to staff counsel's proposal that these documents be included in the record?

Mr. Foster: Mr. Examiner, if I may offer a suggestion: In the first place, we will be quite happy to have them made available for inspection or alternatively to be made a part of the record in the proceeding. We had not viewed them as essential parts of the application; therefore, they were not heretofore attached.

Adopting and pursuing the suggestion, which I gather Your Honor was pointing toward a moment ago, I would like to offer the suggestion that so far as these documents are in narrative form they be spread upon the transcript, and insofar as the attachment with respect to one of these documents is concerned that it be examined by anyone who is interested here, now, and if deemed to be necessary or desired by any party we can thereafter have it reproduced and made available as a part of the record, or separately for information.

[106] Mr. Woodfill: We concur in that, Mr. Examiner.

Mr. Voight: If Your Honor please, four of the supplemental letters, which consist of seven pages, have no diagram or anything attached, and can certainly be spread on the record.

Presiding Examiner: Any objection?

Mr. Geneau: No.

Presiding Examiner: Counsel for any intervenor?

Mr. Ryan: We haven't seen the documents, Your Honor.

Presiding Examiner: You may see them.

Are you ready?

Mr. Simons: Yes, sir.

Might I inquire whether there are comparable letters between Tennessee and the other three applicants herein? All of these seem to be to Continental Oil.

Mr. Foster: It is my understanding, Mr. Examiner, that the copies are identical in every case and there are such similar agreements.

Presiding Examiner: Counsel?

Mr. Woodfin: That is correct, sir.

Presiding Examiner: All right.

Mr. Simons: I would have no particular objection to these documents being copied into the record. I think it might be somewhat better if they were—if copies were prepared up and sent to the parties, but I wouldn't object to it being done the other way.

[107] Presiding Examiner: The reporter may copy the documents handed him by counsel for the applicant, produced in compliance with staff counsel's request at this point, except for the diagram attached to one of the documents.

(The documents referred to are as follows:)

TENNESSEE GAS TRANSMISSION COMPANY

P. O. Box 2511

HOUSTON 1, TEXAS

August 17, 1956

Please address your
Reply to Attention of:
Wm. W. Witmer

Continental Oil Company
P. O. Box 2197
Houston, Texas

Gentlemen:

Tennessee Gas Transmission Company, as Buyer (hereinafter called "Tennessee") and Continental Oil Company, as Seller, (hereinafter called "Continental"), are concurrently executing of even date herewith a gas purchase and sales agreement (hereinafter called the "contract"), covering the purchase and sale of gas from reserves dedicated under said contract, which reserves are located in the East Cameron, West Cameron and Vermilion Areas in the Gulf of Mexico.

In the event it is determined by statute or by judicial process that the Federal Power Commission does not have [108] control over prices which producers such as Continental are allowed to charge for gas sold to gas transmission companies such as Tennessee during the term of the contract, or in the event the Federal Power Commission accepts and allows to go into effect rates which producers are allowed to charge for gas sold as a result of the operation of favored nations clauses and price redetermination clauses in gas purchase and sales agreements similar to the above mentioned contract, with respect to provisions

affecting price, quantity, quality and delivery, Tennessee agrees to amend said contract and add thereto a favored nations clause and price redetermination clause substantially similar to and like those contained in the gas purchase and sales agreement dated January 31, 1956, between Tennessee and Continental covering gas located in the West Delta Area, Gulf of Mexico. The area in which these clauses will be operative will be the area located South of the red line plotted on the official leasing maps attached hereto. However, if during the term of said contract the boundary dispute relating to title to the submerged lands located off shore of the State of Louisiana between the United States and the State of Louisiana is judicially determined or settled, Buyer and Seller agree that effective as of the date said boundary dispute is so determined, the favored nations and redetermination clauses referred to immediately above will be operative in the areas located South of the most Southerly boundary line [109] of the State of Louisiana so determined. The redetermination clause will be based upon the pricing periods contained in Section 10 of the contract.

Yours very truly,

TENNESSEE GAS TRANSMISSION COMPANY

By /s/ Wm. W. Witmer
Vice President

Agreed to and Accepted this
17th day of August, 1956

CONTINENTAL OIL COMPANY

By /s/ O. L. FISHER
O. L. Fisher

Initialed by: HEV GW SVM MSK

This is a copy

CONTINENTAL OIL COMPANY

P. O. Box 2197

February 8, 1957

Tennessee Gas Transmission Company
P. O. Box 2511
Houston 1, Texas

Attention: Mr. W. W. Witmer

Subject: Pipe Transfer Agreement Between Tennessee and Continental-East Cameron, West Cameron and Vermillion Areas

Gentlemen:

With reference to the subject letter agreement, dated August 20, 1956, between Tennessee Gas Transmission Company and [110] Continental Oil Company, item 2 provides that "Tennessee will deliver to Continental, as operator of the leases owned by the parties named above, at Continental's option, its plans and specifications for a pipeline or pipelines to take gas pursuant to the above referred to contract in the event satisfactory certificates have not been issued by February 1, 1957, together with information regarding its rights of way, easements and permits to construct such lines. Any construction agreements or proposals will also be made available for the information of Continental."

Please be advised that Continental requests the information provided for in item 2, as set out above.

Yours very truly,

CONTINENTAL OIL COMPANY

By

cc: Mr. O. L. Fisher, Continental Oil Company
Mr. E. B. Miller, Jr., Tidewater Oil Company
Mr. C. F. Sharp, The Atlantic Refining Company
Mr. J. A. Cleverley, Cities Service Production Company

August 20, 1956

WHEREAS, Tennessee Gas Transmission Company, hereinafter referred to as "Tennessee", has entered into an agreement with Continental Oil Company, hereinafter referred to as "Continental", dated August 17, 1956, for the purchase of gas produced from certain reservoirs in the East Cameron, West Cameron and [111] Vermilion Areas of the Gulf of Mexico; and,

WHEREAS, Section 2 of the agreement provides that the parties will file for required certificates and in the event satisfactory certificates have not been received by April 1, 1957, either party shall have the right to cancel the agreement; and,

WHEREAS, Continental will not require a pipeline connection if satisfactory certificates are obtained by the parties as provided in Section 2, and with the approval of its Co-lessees, as evidenced by their joinder herein, desires to transfer its rights in and to the steel ordered for a pipeline or pipelines from the dedicated reservoirs to shore; and,

WHEREAS, Tennessee agrees to transfer pipe, fittings, valves, and connections to Continental if at a subsequent date, as herein provided, the satisfactory certificates have not been granted.

NOW THEREFORE, in consideration of the premises it is agreed that:

1. Continental, as Operator of the leases owned by Continental, the Atlantic Refining Company, Tidewater Oil Company and Cities Service Production Company, does by this act transfer and assign all of its rights in and to the steel ordered for pipelines to serve reserves dedicated to Tennessee. Tennessee shall pay the supplier for such steel as delivered.

2. Tennessee will deliver to Continental, as Operator of [112] leases owned by the parties named above, at Continental's option, its plans and specifications for a pipeline or pipelines to take gas pursuant to the above referred to contract in the event satisfactory certificates have not been issued by February 1, 1957, together with information regarding its rights of way, easements, and permits to construct such lines. Any construction agreements or proposals will also be made available for the information of Continental.

3. In the event satisfactory certificates have not been issued by April 1, 1957, Tennessee will deliver to Continental, as Operator, at Continental's option, to be exercised at any time after April 1, 1957, but before January 1, 1958, sufficient steel pipe, fittings, valves, and connections to construct the pipeline or pipelines pursuant to the said plans and specifications (Item 2) from such delivery point to shore.

4. In addition to pipe and connections set out in Item 3 above, Tennessee will, at Continental's option, to be exercised any time after April 1, 1957, but before January 1, 1958, deliver to Continental, as Operator, sufficient pipe, fittings, valves, and connections to connect the shore terminus, which may be built with pipe provided under Item 3, with the plant of Continental or Cities Service Refining Corporation in Lake Charles, Louisiana.

5. At the time, and from time to time, as the pipe and connections are delivered, a complete statement of cost will be [113] presented to Continental with billing by Tennessee for such pipe and connections.

6. In the event the gas sales and purchase agreement hereinabove referred to is not terminated prior to the time satisfactory certificates have been obtained by the parties hereto, and Continental, as Operator of leases, or all lessees, or their designated representatives, has constructed a pipeline in accordance with the plans and specifications of Tennessee, or any part of such line, using in the construction of such a line the pipe and connections acquired from Tennessee pursuant to Item 3, then and in that event the party, or parties, constructing and owning such line will convey to Tennessee, at cost, all of its right, title and interest in and to such line; including its rights in any right of way or easement it may have the right to convey.

7. In the event Continental exercises the rights herein granted by Tennessee under Items 3 and 4, in whole or in part, it is agreed that the gas purchase agreement between Tennessee and Continental will not be terminated by failure of a party to secure satisfactory certificates prior to January 1, 1958.

The Atlantic Refining Company, Tidewater Oil Company, and Cities Service Production Company join herein for the purpose of evidencing their agreement to the commitments of Continental, as Operator of leases owned by the parties and further agree that any agreement between any of them and Tennessee for the [114] sale and purchase of gas from properties to be served by the line which "Continental" may construct under Item 3 will not be terminated prior to January 1, 1958, if Continental exercises its option.

CONTINENTAL OIL COMPANY

By O. L. Fisher

TENNESSEE GAS TRANSMISSION COMPANY

By Wm. W. Witmer

Initialed by: HEV GW SVM MSK

APPROVED:

THE ATLANTIC REFINING COMPANY

By: J. N. Mendenhall,
General Manager of
Domestic Crude Oil Production

TIDEWATER OIL COMPANY

By Lloyd Armstrong
Assistant Division General Manager

CITIES SERVICE PRODUCTION COMPANY

By C. Keuier
Manager, Natural Gas Division

[115] TENNESSEE GAS TRANSMISSION COMPANY

P. O. Box 2511

Houston 1, Texas

August 17, 1956

Please address your
reply to Attention of:
Wm. W. Witmer

Continental Oil Company
P. O. Box 2197
Houston, Texas

Gentlemen:

Tennessee Gas Transmission Company, as Buyer, and Continental Oil Company, as Seller, are concurrently executing a gas purchase and sales agreement (hereinafter called the "contract") of even date herewith, covering Continental's interest in leases and natural gas dedicated thereto, such leases and gas being located in the Vermilion, East Cameron and West Cameron Areas in the Gulf of Mexico.

In Section 10, the contract provides that "Buyer shall reimburse Seller the amounts for which Seller is liable and pays to the State of Louisiana or Federal Government applicable or equivalent to the gathering tax imposed by Act No. 11, Louisiana Laws of 1948, as amended by Act No. 45, Louisiana Laws of 1954, in respect of or applicable to gas delivered hereunder. . . ."

Under the contract the total monetary consideration to pass [116] from Buyer to Seller for all gas delivered

thereunder is to be the purchase price, as determined by the applicable provisions of Section 10, plus the amount, if any, of reimbursements for taxes other than the Louisiana gas gathering tax at the present rate, plus one cent (1¢) per MCF, measured at 15.025 p.s.i.a., payable by Buyer to Seller under the provision quoted above.

The parties hereto realize that certain of the leases dedicated to the contract are so located that the lands covered by such leases may be claimed both by the State of Louisiana and the Federal Government and, therefore, such parties agree as follows: As long as the lands located in the disputed area which are covered by leases dedicated to the contract are considered to be federal domain, the one cent (1¢) referred to above, insofar as such lands are concerned, shall be paid by buyer to seller under the 1¢ as a payment equivalent to or equal to the Louisiana gas gathering tax. In the event any or all of the lands so located are finally determined, during the term of the contract as such term may be extended, to be State of Louisiana domain, the payment of the one cent (1¢) referred to above both prior to and after such determination will be considered to be reimbursement by Buyer to Seller of the gas gathering tax imposed by the State of Louisiana. In this connection, Seller will indemnify and hold Buyer harmless against claims of the State of Louisiana under Act No. 11, Louisiana Laws of 1948, as amended by Act. No. 45, Louisiana Laws of 1954, for amounts past due or to become due applicable [117] to

gas delivered to Buyer by Seller under and according to the terms and provisions of the contract.

Very truly yours,

TENNESSEE GAS TRANSMISSION COMPANY
By /s/ Wm. W. Witmer
Vice President

Agreed to and Accepted this
17th day of August, 1956

CONTINENTAL OIL COMPANY
By /s/ O. L. Fisher

Initialed by: HEV GW SVM MSK

This is a copy

TENNESSEE GAS TRANSMISSION COMPANY

P. O. Box 2511
HOUSTON 1, TEXAS

August 17, 1956

Please address your
reply to Attention of:
Wm. W. Witmer

Continental Oil Company
P. O. Box 2197
Houston, Texas

Gentlemen:

Tennessee Gas Transmission Company, as Buyer and Continental Oil Company, as Seller, are concurrently exe-

cuting of even date herewith a gas purchase and sales agreement (herein-[118]after called the "contract"), covering the purchase and sale of gas from reserves dedicated under said contract, which reserves are located in the East Cameron, West Cameron and Vermilion Areas in the Gulf of Mexico.

Under paragraph 6(c) of said contract Buyer has agreed to transport liquefiable hydrocarbons for Continental Oil Company. The term liquefiable hydrocarbons, as used in said agreement, shall include condensate and distillate which have been or which may be separated from gas.

Yours very truly,

TENNESSEE GAS TRANSMISSION COMPANY
By /s/ Wm. W. Witmer
Vice President

Agreed to and Accepted this
17th day of August, 1956

CONTINENTAL OIL COMPANY
By /s/ O. L. Fisher

Initialed by HEV GW SVA MSK

This is a copy

Presiding Examiner: Counsel, do you need that diagram?

Mr. Geneau: Staff does not need it, Mr. Examiner.

Presiding Examiner: Very well.

The fact that you haven't objected makes it a situation where I don't have to make a ruling as to relevancy, counsel.

Are there further questions?

[119] Mr. Geneau: Yes.

By Mr. Geneau:

Q. Mr. McKinley, if I could direct your attention to part 2 of Exhibit A of Item A, wherein you have set out the sand intervals measured by the electric log, opposite the various wells perforating those sands, am I correct in stating that the numerical designation used in connection with the well applies to the block number which appears on Exhibit No. 1? For example, well 192-B-1 would be a well B-1 located in Block 192 as shown on Exhibit No. 1? A. That is correct. That is that would be a bottom hole location.

Q. Sure. A. It could be a directionally drilled well, that is my point.

Q. Yes. A. All right.

Q. Now, in that list of well numbers I note that there appears two wells designated 66—I should say one well designated 66-A2, apparently having, I believe, two different sands. A. That is correct.

Q. Now, reading the well number in connection with part 1 of this exhibit, I note that no land or leases are dedicated to the performance of this contract from— A. Sixty-six.

[120] Q. Yes. A. That is correct.

Q. In one of the other maps that has been submitted as a part of the application, not of Continental but of one of the applicants in this proceeding, a small square is shown

covering blocks — A. Sixty-two, Sixty-three, Sixty-seven, and Sixty-six.

Q. That is correct. And that also shows up on the Exhibit No. 2, which was sponsored, I believe, by Mr. Vaughn. The matter that I would like to have cleared up, Mr. McKinley, is: What sort of an agreement is involved concerning that small sectional square which appears in Exhibit No. 2 on the map, Block 62 field, D-3, 6310 Miocene sand? A. I haven't got that exhibit, but I know what you are talking about.

The agreement that exists on that property—and, incidentally, it is 168 acres out of each one of those four blocks—is the agreement between Atlantic, Tidewater Oil Company, Cities Service Production Company, and Magnolia Production Company, and Newmont Oil Company. It relates to the development of that 640 acres. It does not in any way change the ownership of the leases. It is really merely as to production from the leases.

Q. In other words, am I correct in saying, Mr. McKinley, that no lease from Block 66 is dedicated to the performance of [121] Item A? A. No lease?

Q. That is right, no lease. A. Yes.

Q. And as concerning the gas that is produced from there, that is shared 75-25 between CATC and between MCN? A. Correct.

Q. And MCN takes its share of gas which is not disposed of by Continental under this contract? A. That is right. They have the right to do what they wish with whatever they have in that particular area under the contract, they certainly do.

Q. In other words, Continental will be selling its interest in that well in section 66 under this contract? A. Correct.

Q. Its three-quarters— A. Its proportionate share of the three-quarters; that is correct.

Q. Have you any idea what MCN will do with its 25 percent of the share of the production from 66? A. I would be guessing on that score, but as MCN is composed of Magnolia, Continental Oil Company, and Newmont Oil Company, I know what one of them would do. What Newmont Oil Company would do I wouldn't know their position on the marketing of gas. There is no other market in the area that I know [122] of. What their decision would be, I really don't know.

Q. Directing your attention to Exhibit No. 1, Mr. McKinley, and in connection with your former testimony, I believe you said that there were nine platforms in existence at this time with the possibility of two more, which might be constructed. A. Yes.

Q. I wonder if you could locate those platforms for me on Exhibit No. 2? A. You are talking, by Exhibit No. 1, about this map?

Q. Yes. A. I know of the existence of the location of one, it would probably be in that block 71, East Cameron area. I don't recall where the other one would be directly. I have a proposed location sheet here, I don't know the exact location—the first one, as I say that I have any knowledge of, the exact location of it I am not sure of, but it would be in the Block 71 field, as I understand it. Where the second one is again I must say I don't recall offhand where it would be.

Q. That is as to the two proposed ones; is that correct? A. That is correct.

Q. What about the nine existing ones? A. The nine existing ones? Sorry, I didn't catch that. I can point

those out to you from the map I have here. Do you [123] want me to come down there, or do you want to come up here, or how do you want to do this?

Q. You can tell me by block numbers. A. All right. One down in the southwest corner of Block 192. One in the southeast corner of 192. There is one in approximately the center of the south line of 192. There is one in the southeast quarter of the northeast quarter of block 193. There is one in the southwest corner of Block 62. There is one in block 49 down in the southerly portion. I would say it was in the southwest quarter of the southeast quarter of block 49. There is one in the southwest quarter of block 51. There is one in block 71. There is one in the northeast quarter of the northeast quarter of block 96, Vermilion. Does that add up to nine?

Presiding Examiner: Yes.

By Mr. Geneau:

Q. Could you tell me just what would be located on each of these platforms, Mr. McKinley? Or what is located on these platforms? A. What is located on the—

Q. The existing platforms. A. Of course on the platforms—I mean I can give you a generalized description of it. I don't pretend to describe it in the manner that you would get it from the production department. A generalized description of that platform would be [124] this: That it is a leveled area with your wellhead on the platform and exposed. There is a drilling well on it, you will have your rig on it, your derrick, and tie up with the tender. Most of these are tender locations. Some of them have been drilled by mobile units, but, of course, where there are platforms that would be the situation, normally speaking.

Is that too generalized for you? Is that what you want? There are no producing facilities on there, if that is what you are getting at.

Q. Are there any separators on these platforms? A. Not at the present time.

Q. Will there be? A. My understanding from our engineering department is that they have pretty well or almost finalized their program on how they will set up their producing facilities on the platforms. As I understand it, there will be separators on the platforms.

Q. On each platform? A. Those that are producing.

Q. Will there be meters on each platform, also? A. That is right.

Q. Is it your understanding that Tennessee will be required to build a line to each one of these nine platforms, plus the two potentials? A. Assuming that each one of them is producing and in [125] this instance they are all producing, they will, yes.

Q. In other words, there will not be one— A. One gathering station.

Q. —one centralized gathering platform, or one centralized gathering platform on which a separator is located? A. No, they will come right to the platform, the delivery point will be at the platform.

Q. Now, Continental will construct any lines—will any of these platforms be interconnected? A. I frankly don't know, but I don't believe they will. I think they will be separate entities, and—in other words, you are thinking of a gathering system within the field?

Q. That is correct. A. It is my understanding there will not be a gathering system in these fields.

Q. So that except, if you will, for the pipe, for the

drill stem coming up with the Christmas tree on the top, except for that pipe there will practically be no pipe of Continental's involved? A. Other than what is necessary to make the connections and that sort of thing when it gets around, plus the producing facilities, separators, water knockouts, and what have you, that they might put on the platforms. At the present time they are not there, if that is what you are really getting at.

Q. Let me ask you one other question along that line. [126] Mr. McKinley: You say that 22 wells have been drilled and if there are some nine platforms does that mean roughly there would be, we may say, two wells per platform? A. No, that would be misleading, actually. There have been some—there have been four dry holes out there, and in some instances I think we are up to the No. five wells on one platform. So it may average out at that, but if I stated that there were two per platform it would be misleading. In some cases there are as many as five.

Q. One other clarifying question there, Mr. McKinley: I understand that some of the wells are drilled off on a diagonal, and some of the wells are dually completed. Can dually completed wells be drilled off and on a diagonal, or must they necessarily be straight wells? A. You are asking me a technical question, but I can take a look at my completion report, and, as I understand it, there are directionally drilled wells that are on a dually completed basis now.

Q. What is your understanding, Mr. McKinley, of the type of gas that Continental and the other three producers are producing from these various leases? A. You mean are going to produce from these leases?

Q. Yes. A. I wouldn't attempt to define the type of gas. All I could say is that it is dry gas, far as I know.

[127] Q. Dry gas? A. I don't want to—I couldn't make a definition that would be worthwhile for your record.

Q. Well, heretofore I think the word "non-associated" has been used. What is your understanding of that? A. You have got me in a technical question, and it is, frankly, outside of my province, I wouldn't want to venture a definition of non-associated. I am not dodging your question, understand, I just wouldn't wish to put one forth.

Q. Could you tell me, Mr. McKinley, why the contract defines gas to mean gas well gas, residue gas after processing, as well as casinghead gas produced with crude oil, if this gas is all dry gas out there? A. Now you have got me back on what I said earlier. You are getting me into technical aspects of it, Mr. Geneau, and if the contract doesn't spell it out I am afraid I couldn't add very much more to it.

Mr. Woodfin: Mr. Examiner, from the standpoint of the record I would like to point out that in some 95,000 acres dedicated under this contract, which acreage is only partially developed at this time, and practically any type of gas may be found there, and I presume that the parties would desire to cover the eventuality to take care of the completed dedication. I think that is already on the record, but I don't want it to appear that this contract was written to cover just the dry [128] gas that has been discovered now. Because future development may discover associated gas.

By Mr. Geneau:

Q. In that connection, Mr. McKinley, let me ask you: Just what is being dedicated under this contract? Any and everything that might be discovered under these leases that are set out in Exhibit A to Item A, part 1? A. If I were to answer that question I would be merely repeating to you what it says in the contract, Mr. Geneau—I can do that if you wish—that our dedication covers the following.

Q. I believe this question has been touched on earlier, Mr. McKinley: Directing your attention to page 3 of Item A, the contract, that is section 3-A-2-ii, I believe, that sentence reading "From November 1, 1958, and during the remainder of the term hereof as such term may be extended hereby, a quantity equal to 1,000 Mcf for each 8 million Mcf of recoverable gas originally in place in the dedicated reserves."

Is it your understanding that by dedicated reserves only those dedicated reserves are included which are listed in Exhibit A to Item A hereof?

Mr. Foster: Mr. Examiner, I would like to suggest that there are portions of pages 7 through 10 of the contract devoted to spelling out the basis for an understanding of the point that counsel is trying to get at, and it would seem to me, [129] far more in order to simply look at the terms of the contract rather than have the witness try to summarize in a sentence what appears on several pages.

Presiding Examiner: The witness may answer.

The Witness: Would you repeat your question, Mr. Geneau?

Presiding Examiner: Mr. Reporter, please read the question.

(The question was read.)

Presiding Examiner: I recall from your prior testimony you said you had nothing to do with the negotiation of this contract.

The Witness: That is correct.

Presiding Examiner: But I think you also said that in connection with your duties in your department that you had to, in effect, to use my language, survey the disposition of the gas?

The Witness: Survey it in the sense as to how it would affect the lease itself. In other words, one, is there production from the lease, or, second, is there not? The answer to that question, whether it be negative or affirmative, concerns me.

Presiding Examiner: Answer that question, if you can, in the light of that.

The Witness: If I understand this correctly, what you are saying is that the intervals that are spelled out in this dedication are they limited to that only; is that correct? Or [130] am I misreading you altogether?

By Mr. Geneau:

Q. Are they limited to two, three, or four million? A. Well, they are limited to this insofar as this is our initial dedication, if that is what you are getting at.

Mr. Woodfin: Mr. Examiner, might I interrupt in the interest of brevity here? I can't see anything on earth controversial about this matter. If staff counsel will tell us what he is trying to ascertain

we might be willing to stipulate it. The contract speaks for itself, there is two trillion feet of gas dedicated at this time from these reservoirs underneath the 95,000 acres.

Mr. Kirby: Could we ask where that appears, where counsel is referring to?

Mr. Woodfin: Of course, it appears in the contract.

The Witness: It appears—I could have answered that easily—

Presiding Examiner: Let us not get into a discussion in which everyone takes part. Counsel, aren't you asking how much more could be dedicated under that contract?

Mr. Geneau: Well, the way they have the contract divided—

Presiding Examiner: I don't want to get into any more detail. But isn't that what you were asking?

Mr. Geneau: Well, they have made provision in this contract for the dedication of additional reserves. With that [171] particular part I am not concerned at the moment. I am merely concerned with how much of the gas which is dedicated now, how much of the gas is dedicated now, period. Whether or not they ever add any more or dedicate any more additional acreage, I haven't gotten into that.

Presiding Examiner: I understood you until you put in the word "acreage."

Mr. Geneau: Leases.

Presiding Examiner: Well, all right. Are you willing to stipulate as to that?

Mr. Woodfin: I have already stated on the record what is dedicated up to this time, from the 95,000 acres and the reservoirs which appear upon section 2 of Exhibit A to the contract; under the entire 95,000 acres up to two trillion feet of gas is dedicated presently under the contract from those reservoirs. If two trillion five is found in those reservoirs, that five is not dedicated at this time. Plus the depth limitation on Vermilion, which appears on this page. But there is two trillion feet of gas dedicated from all those reservoirs. If those reservoirs under the 95,000 acres will produce 10 trillion feet, they still have only two trillion feet. If they only produce two trillion feet, then they have got every bit of it.

By Mr. Geneau:

Q. Mr. McKinley, you are also, I believe, the policy [132] witnesses for the applicants. I direct your attention to page 11 of Item A, section 8-B and C, which deals with the establishment of separators, and the transportation of liquid hydrocarbons, or liquefiable hydrocarbons. Is it your understanding of these sections that the liquefiable hydrocarbons are the ultimate property of the applicants in this particular under this particular contract? A. Did you say ultimate property?

Q. Yes. That until such time as Continental exerts an option to take or extract the liquefiable hydrocarbons they belong to Tennessee, but if, as, and when you do exert such an option then they become yours? A. That would be my understanding.

Q. And that at such time Tennessee, or at such time you exerted such an option, Tennessee would be required to transport these liquefiable hydrocarbons for Continental at no charge? A. That they would transport the liquefiable hydrocarbons I can testify to, yes. As to the charge, I don't recall offhand. I don't think there is a charge involved. I don't recall a charge.

Q. What was your last? A. I don't recall a charge being spelled out. I don't believe there is one.

Mr. Woodfin: Mr. Examiner, I want to make one observation on the record at this point. I don't want to interrupt [133] any move, but I do have to take exception on behalf of Tidewater to the phraseology of counsel's questions with respect to the hydrocarbons, liquefiable hydrocarbons belonging to Tennessee until such time as we exercise our option. We have the right to extract the liquefiable hydrocarbons down to a thousand Btu; if we do not elect to exercise that right then Tennessee gets a little richer gas, but it doesn't own something and then we take it back away from them under option. I don't want the record to reflect that phraseology.

By Mr. Geneau:

Q. To your knowledge, Mr. McKinley, has the Tennessee Gas Transmission Company filed or are they going to file an application with this Commission for authorization to transport liquefiable hydrocarbons? A. I know nothing of that matter.

[134] Q. As the policy witness of Continental, what are the plans of Continental in connection with this extraction?

A. Again, as I have said before, it is my understanding that our Engineering Department has just about finalized what they are going to do with the production from these leases, and I don't believe there has been any currency, or that the report has gotten any currency, and I don't know the details of that report, as to how they are going to handle this particular matter.

Q. You have no idea whatsoever? A. I do not, I have no idea.

Presiding Examiner: Have you further questions?

Mr. Geneau: Yes, Mr. Examiner.

By Mr. Geneau:

Q. Mr. McKinley, as a policy witness of Continental, if at some future date Continental does establish ashore, a separation plant for the extraction of liquefiable hydrocarbons, and does extract and sell liquefiable hydrocarbons, would Continental be willing to accept, in this proceeding, a certificate conditioned upon that event, that a cost of transportation be paid to Tennessee for so transporting those hydrocarbons, or that in perhaps some future rate proceeding the costs be allocated between the costs of transporting the liquefiable hydrocarbons? A. You are asking me a question I don't believe anybody [135] would be able to answer right now. I am not dodging, again, as I say—I am not prepared and I don't think anyone else would be prepared upon receipt of that question to answer you right now. I am not, certainly.

Mr. Foster: In connection with that colloquy, Mr. Examiner, I would like to make this observation for-

Atlantic and for Cities Service: that the assumption underlying the question put to the witness is incorrect, that there is no charge for the transportation.

It appears to me that that necessarily is a part of the consideration for the overall transaction spelled out in the entire contract and his attempt to isolate that and assume that there is no consideration for that is not established and the assumption is not founded.

I think the record should be made clear on that point. And as to whether the applicants would be willing to accept some considerational certificate, in any respects, is a matter we can't consider in a vacuum.

Mr. Geneau: Might I ask Mr. Foster there, Mr. Examiner, whether or not then the price of gas to Tennessee must be higher than the 21.4 cents, if that is a part of the consideration? To the extent that we could put a value on the cost of transporting any liquefiable hydrocarbons, that would be an increased cost to Tennessee, would it not?

Mr. Foster: I don't think that there is a basis, as I [136] understand the contract, upon which you can isolate and arrive at any determination such as you are assuming.

Presiding Examiner: Very well.

By Mr. Geneau:

Q. Mr. McKinley, directing your attention to page ten of Item "A", Section 5, that provides—Part A provides that on or before the date of initial delivery of gas hereunder,

Buyer and Seller will endeavor to determine by agreement the total quantity of recoverable gas in place dedicated hereto as of the date of initial delivery hereunder.

Has that determination been made? A. I have no knowledge of it having been made. It may have been, but I have no knowledge of it.

Q. Directing your attention to page 8 of Item "A", Part B, provides, in effect, for an additional dedication, I guess you could call it, in this same area.

Presiding Examiner: What section is that?
Mr. Geneau: That is Part B.
Presiding Examiner: Of what?
Mr. Geneau: I am sorry, 4-B.

By Mr. Geneau:

Q. —that on or before August 1st of '57, additional gas reserves may be dedicated in these three areas. To your knowledge, has any gas reserves been so dedicated under B? A. To my knowledge, there has not been any.

[137] Q. And I believe Section C, following that, provides for an alternative dedication on or before August 1st, 1958. Has any been made under that? A. No, not to my knowledge.

Q. Is it your understanding of those two provisions, Mr. McKinley, that if—I appreciate, or at least my interpretation is that if dedications are made under "B", they won't be made under "C", or if they are made under "C", they won't be made under "B". A. That would be an interpretation.

Q. In that connection, is it your understanding whether either under "B" or "C", Tennessee will not be required to build any additional facilities to take this gas? A. I

have no knowledge of that particular phase of it, whether this would require them to build more or not. I couldn't answer, I am afraid.

Q. The reason I ask is nothing is said in that particular section, but coming to Part "D", Part "D" is a provision for additional reserves, the dedication of additional gas reserves, and as a part of that section, Part 3 provides that Tennessee can be required to build probably one mile of lateral gathering line for each 10 million Mcf that is added. A. I follow you.

Q. And I believe 100 Million Mcf can be added each year for 9 years, so that in any one year Tennessee can be required [138] to construct ten miles of gathering line for each ten million Mcf dedicated. Is that your understanding of this section of the contract, that Tennessee will construct and operate all the gathering facilities that are necessary to purchase or to take gas from C.A.T.C.? A. It is my understanding, yes, that would be correct, that they would gather.

Q. Directing your attention to page 15 of Item "A", Mr. McKinley, Part "C", near the bottom.

Presiding Examiner: What section is that?

Mr. Geneau: That is 8-C, near the last part of "C".

By Mr. Geneau:

Q. Could you tell me why the limiting figure of 700 pounds per square inch gauge was used in that connection? A. No, I can not, Mr. Geneau. That is a technical question, again, and I am not in a position to answer it for you adequately.

Q. One thing more, Mr. McKinley: I think in your prior testimony you used the phrase which appears in the contract, the phrase: "Maximum efficient rate of flow." Just what is meant by that phrase as you used it? A. The trouble with using words sometimes is you are not always sure what you are using in the way of a word. But "maximum efficient rate of flow", as far as I am concerned, is just exactly what it says, what you can flow at the most effic-[139]ient rate, and the maximum thereof. I wouldn't want to go into an engineering definition of it, because you wouldn't be able to get one from me. That is my understanding of it.

Q. I think that phrase was used in Section 3-D-1? A. Yes, I believe it was.

Q. Of the contract. A. Yes. It is used someplace else, too.

Q. Yes, probably so.

Mr. Geneau: We have no further questions, Mr. Examiner.

Presiding Examiner: Are there further questions before redirect?

Mr. Ryan: Your Honor, I don't have any further questions at this time. I would like to reserve the right to look at these documents which were placed in the record in case I may have some questions on them.

Presiding Examiner: Your time for cross examining the witness now, counsel. The documents were in the room and available for your use.

Mr. Ryan: They have been put into the record. I have not had an opportunity to examine them.

Presiding Examiner: Didn't you look at them before?

Mr. Ryan: I glanced at them for the purpose of deciding whether I should object to them being copied into the record or whether they should be put in as exhibits.

Presiding Examiner: Do you have copies of the documents? [140] Make them available, counsel.

Mr. Kirby: I thought your intention was that we would all have an opportunity to examine the record which is going to contain the printed exhibits. There would be no point in putting them into the record if we don't have a chance to examine them.

Presiding Examiner: Don't quarrel with the ruling. The time has now come for final cross-examination before redirect.

Do you have copies of the documents that counsel may use?

Mr. Voight: Yes.

Mr. Geneau: Might Staff ask for a 5-minute recess?

Presiding Examiner: We took one 5-minute recess that ran 15 minutes. Why do you want the recess, counsel? Just the ordinary recess?

Mr. Geneau: Pardon, sir?

Presiding Examiner: We can take a very short recess, but I am going to set it for five minutes and I want to hold it to five minutes. The hearing is—

Yes, counsel?

Mr. Woodfin: If it is at all possible, there are a great number of us here that have to catch air-

planes, and such as that. I don't know how many questions these gentlemen are going to have, but if we could finish today it would certainly be appreciated.

Presiding Examiner: The hearing is recessed for five minutes.

[141] (Whereupon, at 3:56 p.m., a recess was taken to 4.01 p.m.)

Presiding Examiner: The hearing will be in order.

Staff Counsel is not present. The hearing is recessed for two minutes.

(Whereupon, at 4:01 p.m., a recess was taken to 4:03 p.m.)

Presiding Examiner: The hearing will be in order.

By Mr. Ryan:

Q. Mr. McKinley, did you have anything to do with the negotiation of these supplementary agreements? A. No, I did not.

Q. Do you have any knowledge of any further agreements that may be existing between the applicants here and Tennessee with respect to this gas? A. I think you have them all.

Q. This is the sum total of them? A. I think it is.

Mr. Ryan: In view of the fact that the witness obviously doesn't know anything about these, I have no questions.

Presiding Examiner: Other counsel?

Mr. Kirby: Mr. Examiner, I want to state for the record that I haven't had sufficient time to examine these records and I think the Court should allow me enough time to look them over, over the evening. I will be perfectly ready to go and ask any questions first thing in the morning.

Presiding Examiner: What is your position on that? First [142] of all, did you make an effort to look at them during the recess?

Mr. Kirby: Mr. Examiner, there were six pages, as I understand it, and they first handed to Mr. Ryan and then as soon as he finished the first page I came back and started in on them. I did make an effort. I can speak with reference to the first page. Apparently—

Presiding Examiner: I don't know what it is now. We have been over that.

Mr. Kirby: You may have been over it.

Presiding Examiner: We have been over it. What did you do after the first page? Did you stop?

Mr. Kirby: No, I picked up the second page right here, it was a 5-minute recess, and during that period of time Mr. Ryan came back and he took that second page again.

Presiding Examiner: It was more than a 5-minute recess, because we were waiting for Staff Counsel to come in. Were you working on those things in the time available to you?

Mr. Kirby: I can't work that fast. It is impossible for me to do that.

Presiding Examiner: It is a very simple thing. I think you could have done it.

Anything else before redirect?

Mr. Simons: I join in Mr. Kirby's recess.

Presiding Examiner: What did you do during the recess?

[143] Mr. Simons: It seemed to me it was patently impossible to run through these during the recess.

Presiding Examiner: That is your assumption?

Mr. Simons: Yes, it is.

Presiding Examiner: Is there any redirect?

Mr. Voight: Continental has no redirect.

Presiding Examiner: The witness is excused.

(Witness excused.)

Presiding Examiner: Your next witness.

Whereupon, HOWARD R. BORN was recalled as a witness, having been previously duly sworn, was examined and testified further as follows:

Presiding Examiner: This witness was first examined by counsel for intervener Tennessee Gas Transmission. Are there any questions of the witness by any of the applicants?

Mr. Woodfin: I have one question, Your Honor.

Further direct examination by Mr. Woodfin:

Q. Mr. Born, you testified this morning as to the recoverable reserves which you had calculated under the dedicated acreage or under the reservoirs dedicated in the 95,000 acres under the four contracts, and as I recall, that was approximately one trillion point six cubic feet of gas; is that correct? A. That is correct, yes, sir.

[144] Q. Mr. Born, I ask you if you would make a calculation on how many acres are involved out of the 95,000 acres in that present calculation; have you made that determination? A. I made such a determination, yes, sir, and out of the 95,000 acres which are dedicated the four companies to Tennessee Gas, approximately 11,500 of those acres are contained in the area which I have estimated the 1,600,000,000 some-odd cubic feet of gas, which amounts to—or in other words, 12 per cent of the 95,000 acres is proven.

Q. Twelve per cent of the 95,000 acres, if I understand you, Mr. Born, is already proven, 1,600,000,000 cubic feet of gas; is that correct? A. That is correct.

Mr. Woodfin: Thank you.

Presiding Examiner: Further questions by applicants?

Mr. Voight: No, sir.

Mr. Foster: No, Your Honor.

Presiding Examiner: Cross-examination by counsel for Brooklyn Union and Long Island Lighting?

(No response.)

Presiding Examiner: Lake Shore?

Mr. Ryan: I have a couple of questions in the nature of clarification; I want to make it clear, however, that I do not purport to examine Mr. Born as to the accuracy of the figures contained in his Exhibit 2. We have not had an opportunity to [145] see the working papers and I presume that this study will again be presented by Tennessee in its own certificate case, 11107, and we will then have an opportunity to see the working papers and determine the accuracy of the statements.

Transcript of Hearing Held February 28, 1957 [Vol. I]
Howard R. Born—Recalled—Cross

Cross examination by Mr. Ryan:

Mr. Born, on the first page of Exhibit 2, which has any writing on it, the term is used there "non-associated gas". Could you more clearly explain what is meant by that term, please?

Mr. Littman: Just a minute, Mr. Examiner. I am going to object to this line of inquiry. The petition for intervention filed by Lake Shore very clearly restricts the interests of that petitioner to the matter of price, and the Commission's order granting intervention in this case limited the intervention to the matter specified in the petition to intervene.

That order said: provided that these parties are permitted to intervene, including Lake Shore, provided, however, that the participation of petitioners as interveners shall be limited to matters affecting asserted rights and interests specifically set forth in their respective petitions for leave to intervene, and so forth.

In the petition to intervene, copy of which I have before me, it says very clearly that their interest—I have it here—they say: "It appears from an examination"—reading from page 2 of the petition to intervene—they say that "It appears from an examination of the contracts between applicants [146] and Tennessee that the initial price provided for therein is 21.4 cents per Mcf, which price, to petitioner's knowledge, is higher than any price being presently paid to natural gas producers in the south or southwest area of the country", and later on they refer to the fact that—to the contention that

since the service proposed in the instant application may affect the rates under which Lake Shore purchases gas from its sole supplier, Tennessee, it, Lake Shore, has a vital interest in the application.

I can find nothing in this petition which makes any allegation which would entitle this petitioner to interrogate this witness concerning the substantiality or extent of the gas reserves.

Mr. Ryan: Mr. Examiner, I prefaced my question by saying that I am not going to question Mr. Born as to the substantiality of the reserves, I don't purport to, we haven't had the data upon which to do that. My question goes to clarifying this exhibit in connection with questions which are raised as to the meaning and intent of these contracts.

Now, Mr. Littman read from part of our petition to intervene. He didn't read far enough. On page 3—

Presiding Examiner: I read it. The witness may answer.

The Witness: Non-associated gas is just what it says, it is gas which is non-associated with oil, sometimes referred to as free gas, or gaswell gas, purely gas reservoir.

[147] By Mr. Ryan:

Q. Would that include gas which is known as condensate gas? A. Gas has, if it is rich or if it has any condensate in it, it would be condensate gas. Non-associated gas contains, many times, condensate.

Q. Now, on Line 20 of the first page of Exhibit 2, which has any writing on it, you make reference to the B.t.u.

content of the gas as being above 1,000? A. That is correct.

Q. From your studies were you able to determine how far above 1,000 this gas is in terms of B.t.u. content? A. I know the characteristic of gas in the Gulf Coast area—

Q. I didn't ask you that, I asked you this particular gas. Were you able to make any determination of this particular gas?

Mr. Littman: I think the witness should be permitted to continue with his answer and finish it.

Presiding Examiner: Answer the question.

The Witness: I did not look at an analysis of this particular gas because they haven't had any production from it. I don't recall that analysis. But from 18 years of experience in the Gulf Coast, I have yet to see, yes, sir, and I am going to get it on the record, any gas that I have considered to be below 1,000 B.t.u. content; it is just characteristic of the [148] gas in this area to be above 1,000 B.t.u.

By Mr. Ryan:

Q. But how far above this gas may be, you don't know; is that correct? A. I would say a lot of the gas averages as high as 1100, some close to 1200 B.t.u.

Q. Assuming the gas to be 1200 B.t.u., if the producers were to extract that down to 1,000 B.t.u., what would that be in terms of volume? What percentage would be extracted from the gas? A. I don't know the richness of the gas, so I couldn't tell you, sir.

Q. Assuming it to be 1200 B.t.u. A. I wouldn't know offhand. That is out of my category.

Q. Now, on Line 22 of that same page you make reference to remaining recoverable reserves. Is that reserves in place in the ground? A. That is original reserves which are recoverable. It is the in-place gas after I have applied a recovery factor to it, that is originally in place before production.

Q. That does not take into consideration the fact that some of this gas may be extracted by the producer before Tennessee ultimately gets it for sale to its customer, does it? A. If the operator or anyone takes condensate out of this, or puts it through a plant, you would naturally have to [149] shrink it.

Q. Mr. Born, are you aware of the fact that the contracts here involved permit the sellers of this gas to extract up to ten per cent of the volume of the gas? A. I don't know the percent, but I know there is, that either they or Tennessee, I believe—I am not the contract man—there is a right to extract, I believe.

Q. And to the extent that they did take out a certain volume of gas in the form of liquefiable hydrocarbons, then that would reduce the figures which are shown here on your exhibit, would they not? A. Yes, it would make a slight reduction.

Q. A slight reduction? A. Yes.

Q. Doesn't it depend on what percentage, volume-wise, they take out of the gas, whether it is a slight reduction or not? A. Well, to the total reserves it wouldn't amount to too much gas.

Q. Assuming they have the right to take out ten per cent of the volume, would you call ten per cent a small amount? A. I don't understand what you mean, ten per cent of the volume.

Q. Ten per cent of the volume of gas which is produced, they have the right to extract volumewise ten per cent; would [150] you call that a small percentage? A. You mean ten per cent of the total gas which is produced they will process?

Q. They will extract ten per cent for their own use, volumewise, ten per cent. A. Maybe you and I are on a different wave-length.

Presiding Examiner: You had better show him, make a reference to what you have in mind, counsel.

By Mr. Ryan:

Q. Do you have a copy of one of these contracts before you? A. No—I see there is one up here. What page?

Presiding Examiner: Do you have the reference?

Mr. Ryan: Yes, it is on page 11 of the typed copy. It is paragraph 6-B.

The Witness: 6-B.

By Mr. Ryan:

Q. Yes. The third line of that subparagraph B, there is contained the statement "Provided, however, that such processing will not, including shrinkage and fuel, remove more than ten per cent of the volume of gas produced and delivered by seller to buyer daily hereunder."

Do you see that, Mr. Born? A. Yes, sir.

Q. Would you call the reduction of the volume of gas by [151] a ten per cent figure a small amount? A. Well, it has "up to ten per cent". I don't know what the actual per cent would be.

Q. Assuming it were ten per cent, would you call that

a small amount? A. Well, what is ten per cent of one trillion six?

Q. Are you asking me what it is? A. Yes.

Q. 167 billion, isn't it? Am I correct? A. I presume that would be about right.

Q. Is that a small figure? A. Out of one trillion six, I don't think it is large.

Q. Now, from your Exhibit 2, I believe you testified orally to this figure 1.673 trillion. How did we arrive at that figure? Is that merely the addition? A. Yes, Mr. Ryan. If you will take Line 22 and add the totals up for each one, you will come out to the 1,673,000,000,000-some-odd cubic feet of gas.

Q. Does this figure represent the agreement contemplated by Section 5 of the contract between the producers and Tennessee? A. I have made no agreement with, or a determination, formal determination of reserves with the operator.

Q. To your knowledge has any been made? A. Not to my knowledge, no, sir.

Mr. Ryan: That is all I have of this witness, Mr. Examiner.

[152] Presiding Examiner: Counsel for the Public Service Electric and Gas.

Mr. Kirby: Mr. Examiner, I stated earlier in the day that I wouldn't be able to proceed with any cross-examination on a technical subject such as this. However, I assume that this same study will probably be introduced by the Tennessee Company in Docket G-11107, and that would give me sufficient time to have our people look it over and be prepared at that time.

So if I may just ask the witness that one question, whether he is preparing it for that later docket, I will be satisfied, without making a request for the delay that we would need.

The Witness: These reserves will be presented by Tennessee in Docket G-11107.

Mr. Kirby: That is satisfactory.

Presiding Examiner: New York Public Service Commission.

Mr. Simons: I have just a few questions.

By Mr. Simons:

Q. Would you turn to the third map, please? I note that you have different lines going around outline of productive limit. Could you explain to me what those different types of lines mean? A. Yes. The solid lines with the solid arrows indicates fault patterns, the arrow denoting the down-thrown side, the long-dashed line to the left indicates that the productive [153] limit as to either a gas-water contact or a gas down to a certain level. The symbol to the right, which is a line, a longer line with a smaller line projecting out to the right, indicates, in this case, that it is the limit of the sand. In other words, on the other side of that line the sand would pinch out. That is the extent of the sand to the east.

Q. And on this same map, I think the prior witness may have touched on it, but what does MCN stand for? A. Magnolia, Continental and Newmont, I believe is the name.

Q. What is the last one? I didn't catch that. A. Newmont. I believe that is correct.

Q. Now, in the course of your direct examination I think you stated that you obtained certain information

from the operator. I wonder if you could state, in general terms, at least, which information, as shown on your exhibit, was obtained from the operator and which was obtained or derived by you. A. The information I obtained from the operator was—which is more or less standard—was electrical loggings, well surveys—by that I mean directional well surveys—core records, any core analyses, production test, drill stem tests, any pressure test or temperature surveys available.

What I have obtained for myself, so to speak—Tennessee has a set of files on scouting information, which is standard, every company keeps it on wells which are drilled. And in addi- [154] tion to that, we have information on fields throughout this general area, and I draw upon that, as well as upon the information furnished to me by the operator.

Q. Are you able to state which of the information shown in your exhibit would be solely your responsibility or the responsibility of someone working under your direction and supervision, as distinguished from being information given to you by the operator? A. We use the information given to us by the operator and make our own interpretation of it.

Q. For example, turning to the very first page in the exhibit, excluding the blank page, what information on that sheet was solely your responsibility, as distinguished from information given to you by the operator? A. All of it was solely my responsibility. I obtained information from the operator which I used to arrive at these figures which are my responsibility.

Q. Just, for example, how about average depth; how did you determine that? A. I determined that from a

correlation of electrical logs that is not furnished by the operator, I made my own determination, you see. The same way with the depth of water contact. What I got from the operator I guess would be the total dedicated acres which is stated in the contract.

Q. Now, with reference to the maps, will you state what [155] information shown on the maps represents information given to you by the operator? A. Well, in the contract itself, or in an exhibit attached to that contract, there is, I guess, a tabulation showing the leases which are involved, and also, I believe, we were furnished a map by the operator showing the leases. And we checked that with the leases described in the contract. That is how we arrived at what dedicated acreage is. They furnished us description of the acreage as well as a plat showing the acreage.

Q. Now, sir, in the formal case file in this proceeding there is contained a memorandum to the Commission from the Bureau of Rates and Gas Certificates which contains in it the information that of Tennessee's additional reserves in G-11107, C.A.T.C. is to provide 1,769,000,000,000. I believe you stated a figure of 1,673,000,000,000. Are you familiar with the first figure I mentioned, and can you explain any difference? A. I am not familiar with the first figure you gave me, as reflected in the memo. I haven't seen the memo.

Q. Was any earlier estimate made—

Mr. Geneau: I am going to have to object, Mr. Examiner. It is my understanding—now, I may be wrong, but the gas Certs memos are a matter of confidential nature and presumably are not available

to outsiders for any purpose whatsoever; that they are only available for the personal information of [156] the Commission and the Staff.

Presiding Examiner: Is there any rule or regulation of the Commission to that effect?

Mr. Geneau: I can't point to a written one. But it is my understanding that that is the unwritten rule, and this is the first time I have ever known gas certs. memos to even come up. If that were the case, we could merely introduce them as evidence in all these cases and it would be that much easier.

Mr. Simons: It is part of the case file that I asked to see down in the reference room. I merely requested the formal file. If they would like to have it in evidence I would be glad to offer it in evidence.

Presiding Examiner: There may be a new rule on that. All right.

The Witness: I think the difficulty is—I don't have an exhibit in G-11107, but I believe that figure includes the, probably, the M.C.N. Gas and C.A.T.C., et al., but to satisfy your inquisitiveness, we have not reduced our reserve estimate and there is no change in the estimate on the actual so-called C.A.T.C. reserve estimates.

Like I say, the difference which you read and what I have shown here is that amount of reserve which is contained under the M.C.N. dedication to Tennessee Gas.

By Mr. Simons:

[157] Q. By subtraction of the two figures I get about 100 billion. Would that be your understanding of what

the M.C.N. dedication is? A. If I had my exhibit here I could tell you the exact figure.

Q. When you say your exhibit, you mean your exhibit in 11107? A. Yes, sir.

Q. But you don't recall it right now? A. I don't recall it offhand.

Mr. Simons: That is all I have of Mr. Born.

Presiding Examiner: Staff Counsel?

Mr. Geneau: Yes, Mr. Examiner.

By Mr. Geneau:

Q. Mr. Born, have you made any calculations at the request of the Staff? A. Yes. Staff asked me a few questions, and one of them was: How much of the total proven reserves I have are not tested by the conventional production method. I have this figure here. This is rounded—I mean it may vary a very small amount, but there is approximately 430,000 MMcf of untested reserves, and to get this back to trillion, there is 430 billion out of the 1,673,000,000,000 reserves which are untested.

I was further asked on a reserve ratio basis what would the minimum quantity be, daily quantity. So dividing, first, [158] the 1,673,000,000,000, which is the total proven reserves, by eight, I would get an average day minimum take of 209 million cubic feet.

And taking that 1,673,000,000,000 and subtracting from that the untested of 430 billions, I get a total of tested reserves amounting to 1,243,000,000,000 feet. Taking that figure and dividing it by 8, to get a minimum daily contract quantity it would be 155 million cubic feet a day.

Does that satisfy you on that part of it?

Q. Yes, it does. A. Then, in addition to that, Staff also asked me: In the gas purchase contract there is a tabulation showing the reservoirs in the East and West Cameron areas which are dedicated to Tennessee Gas Transmission Company. If you will note on that tabulation, it lists a multitude of these reservoirs, and Staff asked which of these I have currently set up in my reserve estimates.

So, for the record, I guess I just might read these off, Mr. Examiner: The numbers in the left hand columns I will read first, and the numbers in the right-hand column, which are the well identifications, I will read second:

The first one we considered is the 4897 to 4992, sand in Block 192, Well B-1. That has a well completion in it.

Presiding Examiner: Which one was that?

The Witness: 4897 to 4992.

[159] Mr. Voight: That is the third one, Mr. Examiner.

The Witness: Yes, sir. I might number these, Mr. Examiner, it might be a little easier than reading them off, or do you suggest I just continue reading them?

Presiding Examiner: Either way.

The Witness: All right.

The next one is the depth from 5182 to 5196. This sand is identified in Block 192, Well A-1. That is an untested reservoir which I consider proven.

The next one is 6110 to 6129. That is called the E-1 sand, segments 1 and 2, and that is in Block 192, the B-1 well.

The next sand is the 6212 and 6238, also in Block 192, the B-1 well, and that is set up based on core

analysis and electric log interpretation. In other words, it is untested.

The next one is 5987 to 6,040. That is found in or identified in Block 191, Well A-4.

It has completion in segment 1, and segment 2 is proved by core analysis and electric log.

Next sand is 5826 to 5944, located in Block 192, Well B-1, there is a completion in that sand.

Next one is 6585 to 6667, in Block 192, Well B-1, that is proved by core analysis and electric log.

Next one is 7241 to 7270, located in Block 192, Well A-1, another untested but proven sand by core analysis and electric log.

[160] Next one is 8,080, 8,098, in Block 192, Well A-1, a completion in that sand.

The next one is 8225, 8313, Block 192, Well A-1, there is a completion in Segment 1 and Segment 2 is proved by core analysis and electric log.

Next one is 8796, 8867, located in Block 192, Well A-1. There is a completion in that sand.

[161] Next one is 9483, 9552, located in Block 192, Well B-1, there is a completion in that sand.

Next one is 10,594 to 10,645, located in Block 49, Well A-2. That sand is set up proven based on core analysis and electric log.

The next one is 11,080, 11,099, located Block 49, Well A-2. That is set up by completion in that sand.

Next one is 7,005 to 7,045, located in Block 66, Well A-2. That sand is set up based on core analysis and electric log.

Next one is 6397, 6410, located in Block 62, Well

A-1. That sand is set up by core analysis and electric log.

Next one is 7126, 7186, located in Block 62, Well A-1. Set up by completion.

Next one is 7935 to 8027, located in Block 66, Well A-2, set up by completion.

The next one is from 7621 to 7765, located in Block 62, Well A-1, that is set up by completion.

Next one is 7129 to 7176, located in Block 71, Well A-1. That sand is set up by core analysis and electric log.

Next one is 7594 to 7682, located in Block 71, Well A-1, set up by completion.

Next one is 8,063 to 8,103, located in Block 71, Well A-1. That sand is set up by completion.

And the final one is 8443 to 8467, located in Block 71, Well A-1, and that is set up by completion.

[162] Now, just for matter of clarification: The block number and the well I have identified with the sands, it does not necessarily mean that that sand is completed in this particular well, but it may be completed in another well in the same section nearby, a well nearby in the same section. But I read it the way it was on this tabulation, so it would comply with the well in which the sand interval is identified in the contract.

By Mr. Geneau:

Q. Is it your understanding of these basic contracts, Mr. Born, that as additional acreages are dedicated that, if, as, and when they are dedicated that the applicants in this particular proceeding will come into the Commission and file for certificates—

Mr. Littman: I am going to object to that, Mr. Examiner.

Presiding Examiner: It sounds like the objection is a good one, counsel.

Mr. Geneau: Might I know the reason for the objection?

Presiding Examiner: You are asking him what the applicants are going to do on legal advice.

Mr. Geneau: No, I asked him what his understanding of the contract is. He is one party to the contract.

Presiding Examiner: That isn't in the contract. What do you have reference to particularly, a satisfactory certificate provision?

Mr. Geneau: No, no, Mr. Examiner, no satisfactory [163] certificate.

Presiding Examiner: Will you stand, counsel?

Mr. Geneau: No, not that particular provision. I was thinking that under certain provisions of this contract as it now stands certain acreages are dedicated as of now. Under certain other provisions additional acreage may be dedicated. Under certain other provisions still more additional acreages may be dedicated. I was speaking in terms of those acreages which can be dedicated in the future, provision being made for them in this contract.

Presiding Examiner: You are asking him whether he understands that the applicants are going to apply for a certificate?

Mr. Geneau: That is correct.

Presiding Examiner: Objection sustained.

Transcript of Hearing Held February 28, 1957 [Vol. I]
Howard R. Born—Recalled—Cross

By Mr. Geneau:

Q. Are you familiar with these contracts, Mr. Born? A. I have read them, but I am not the man to, Mr. Counsel, testify on the contracts, its provisions, nor interpretation. I rather think you could better and more accurately get that information from Mr. Witmer.

Mr. Geneau: We have no further questions.

Presiding Examiner: Further questions before redirect?

Mr. Ryan: I have one or two further questions, Mr. Examiner.

By Mr. Ryan:

[164] Q. Mr. Born, when you refer to untested reservoirs or untested sands, do you mean that they have not been flow-tested, is that all you mean by that? A. That is correct.

Q. Now, you referred to the minimum contract quantities under these contracts. Do you know what the maximums are? A. No, sir. What I am referring to is in the contract it states the first year we will take 175 million cubic feet a day. After that it is on a reserve ratio basis.

Q. Which is what you computed for the staff; is that correct? A. Yes. And the minimum daily take on a reserve ratio basis, that is what I meant by the figures I previously testified to at the request of the staff.

Q. One further question: What percentage of the total reserves of Tennessee will these reserves, these CATC reserves, constitute? A. I think in our G-11107 filing we show total available to Tennessee of 14,800,000,000,000

cubic feet of gas. That is rounded off. And this being 1,673,000,000,000-some-odd, I guess it would be on the order of 11 or 12 percent.

Q. Based upon your answer to my question about the extraction of 10 percent, would you say that that 10 percent is a small figure, too?

Mr. Littman: I object to that, Mr. Examiner.

[165] Presiding Examiner: Objection sustained.

Mr. Ryan: On what ground?

Presiding Examiner: Don't challenge anything as obvious as that, counsel.

Mr. Ryan: As obvious as what, Mr. Examiner?

Presiding Examiner: You are asking this witness to give his expression of an opinion when you multiply a figure by 10 percent and that is improper.

Mr. Ryan: I asked the witness to tell me in his opinion was that a small figure?

Presiding Examiner: The objection is sustained.

Mr. Ryan: On what ground? I have the right to know.

Presiding Examiner: Ground stated.

Mr. Ryan: By whom?

Presiding Examiner: Counsel, you are going beyond the bounds of propriety. The ruling has been made.

Mr. Ryan: No further questions.

Presiding Examiner: Are there further questions before redirect?

The Examiner is concerned about one matter, and that is the form in which counsel have reserved with respect to cross-examination on reserves.

Now, the Examiner doesn't have to advise counsel on how to proceed with the cross-examination of a witness in order to establish upon the record the necessity for additional time. [166] At the same time the Examiner does not wish this record to convey his consent to a reservation which in form or otherwise would in any way produce a situation where a delay in these proceedings or a consolidation of two separate proceedings would have to be effected.

Now, are there any further questions of this witness?

Mr. Voight: Continental has no further questions, sir.

Presiding Examiner: The witness is excused.

(Witness excused.)

Presiding Examiner: Anything further before the evening recess?

The hearing is recessed to reconvene in this room tomorrow morning at 10 o'clock.

(Whereupon, at 4:47 p.m., the hearing was adjourned until Friday, March 1, 1957, at 10 a.m.)

CONTENTS

[A] WITNESS:

	Direct	Cross	Redirect	Recross
William W. Witmer		173	289	302
			308	309

EXHIBITS:

	Identified	Received
No. 3 (Agreement between Tennessee Gas Transmission Company and Continental Oil Company, dated January 31, 1956.)	218	(Rejected 314)
No. 4 (Agreement between Tennessee Gas Transmission Company and The Atlantic Refining Company, dated January 31.)	218	(Rejected 314)
No. 5 (Agreement between Tennessee Gas Transmission Company and Tidewater Associated Oil Company, dated January 31, 1956.)	218	(Rejected 314)
No. 6 (Agreement between Tennessee Gas Transmission Company and Cities Service Production Company, dated January 31, 1956.)	219	(Rejected 314)

RECESSES:

Morning: 215

Noon: 248

Afternoon: 300

Transcript of Hearing Held March 1, 1957
[Vol. II]

[167] BEFORE THE

Federal Power Commission

In the Matters of:	
CONTINENTAL OIL COMPANY	Docket No. G-11024
THE ATLANTIC REFINING COMPANY	Docket No. G-11034
CITIES SERVICE PRODUCTION COMPANY	Docket No. G-11046
TIDEWATER OIL COMPANY	Docket No. G-11049

Hearing Room "D"
Federal Power Commission
GAO Building
441 G Street, Northwest
Washington, D. C.

Friday, March 1, 1957.

The above-entitled matters came on for hearing, pursuant to adjournment, at 10:00 a.m.

Before—EWING G. SIMPSON, *Presiding Examiner.*

APPEARANCES:

(As heretofore noted.)

Proceedings

[168] Presiding Examiner: The hearing will be in order.

At page 166 of the transcript, just before concluding yesterday's session, there is an observation that the Ex-

aminer made that should be broadened. Therefore, lines 1 through 4 on page 166 should read as follows:

"At the same time the Examiner does not wish this record to convey his consent to a reservation which in form or otherwise would in any way produce a situation where a delay in these proceedings or a consolidation of two separate proceedings would have to be effected."

Mr. Kirby: Mr. Examiner, along that line, I have one other preliminary matter I would like to point out to the Examiner with regard to the transcript.

On page 142 somehow, I suppose in transcribing, the notes fail to show that the length of the recess your Honor called in order to permit staff counsel to enter the room was two minutes. Then, by that omission, I direct the Examiner's attention to line 16, where your Honor stated it was more than a five-minute recess because we were waiting for Staff Counsel to come in. Then your Honor said,

"Were you working on those things in the time available to you?"

Now, if the record shows the two-minute recess, that would mean at most I would have had seven minutes to work [169] on the pages involved.

I would like the reporter to check the transcription and insert the two-minute recess.

Presiding Examiner: There was a little more to it than that, I waited two minutes before I took that two-minute recess. The witness who was on the stand yesterday is here in the room this morning. Do you have any questions you want to put to him?

Mr. Kirby: No, I have no questions, your Honor.

Presiding Examiner: I understand.

Mr. Kirby: The position you put me in with my client—

Presiding Examiner: You are entitled to that clarification, Counsel.

Mr. Kirby: Thank you.

Presiding Examiner: Anything further?

Mr. Ryan: Your Honor, in that connection, I have certain questions to ask about these documents which were transcribed into the record. When I had a chance to go over them last night I found out that the time allotted was certainly not sufficient. I didn't understand them yesterday and it wasn't until last night that I had sufficient time to go over them that I feel that I did understand them.

I think perhaps Mr. Witmer can answer those questions, but I would like to reserve the right to call back Mr. McKinley, in the event Mr. Witmer cannot answer the questions.

[170] Presiding Examiner: Counsel, I did not get into a question that I think is latent in those documents, that is, that they are conditional. The Examiner has no desire to make any special point of that, but I assume your questions would not be extensive.

Mr. Ryan: Would not be extensive, your Honor?

Presiding Examiner: Yes.

Mr. Ryan: I don't believe they will be extensive. I don't know what the Examiner means by "conditional."

Presiding Examiner: Isn't there a contingency stated in the body of each one of those documents?

Mr. Ryan: Not with respect to the ones I am referring to.

Presiding Examiner: There is no contingency in those?

Mr. Ryan: No, sir.

Presiding Examiner: All right.

Before Mr. McKinley leaves the room, Counsel, would you advise the Examiner that he is leaving, in connection with the matter that Counsel for Lake Shore just mentioned?

Mr. Voight: Yes, sir. He is here.

Presiding Examiner: When I say "to leave the room," I mean permanently.

Mr. Voight: Yes, sir.

Presiding Examiner: Next witness for cross-examination.

Mr. Russell: Before that, may I make an inquiry of [171] counsel for the applicants with respect to these documents or letters that have been referred to this morning?

In reading the transcript last night, it is not clear to me: were any of these documents, these letters that were incorporated in the record yesterday annexed to the application or to the contracts that were submitted to the Federal Power Commission in these proceedings?

Mr. Voight: No, sir. We do not consider that those documents are amendments to the contract, nor that they affected the price, except in so far as the one was concerned, the effectiveness was conditioned upon the Federal Power Commission not having jurisdiction.

Mr. Russell: So that the first notice anybody had of those documents was yesterday afternoon when they were asked for as a result of some cross-examination by Staff Counsel?

Mr. Voight: I couldn't say that, sir, I don't know.

Mr. Geneau: In all fairness there, Mr. Examiner, the application of the applicant did indicate that amendments were made to the contract which was attached to the appli-

cation in this proceeding. But outside of that, there was no attachments to the contract.

Mr. Russell: One other inquiry, Mr. Examiner, if I might.

These documents were incorporated by having them transcribed in the record. I wondered if it isn't the usual [172] practice to have them indexed when that has taken place?

Presiding Examiner: They could have been indexed.

Mr. Foster: Mr. Examiner, that, I believe, may proceed upon an assumption that is contrary to the indicated position of the applicants that they constitute a part of—

Presiding Examiner: Yes, we won't have to go into detail. They went in just as if it were testimony from the witness. That is the way I was looking at it at the time.

Mr. Russell: I don't want to belabor the point, Mr. Examiner, but they are not testimony, they are separate documents, and it seems to me that it has been the practice of the Commission where documents are written into the record to at least have them indexed.

There is no way of referring to these except through the testimony.

Presiding Examiner: That is no problem.

Mr. Russell: Isn't it the custom of the Commission?

Presiding Examiner: Let's not get into that. I think I adopted a reasonable basis and we passed that point yesterday.

The next witness?

Mr. Littman: We tender Mr. Witmer for cross-examination, your Honor.

Whereupon, WILLIAM W. WITMER [173] was recalled as a witness, and, having been previously duly sworn, was examined and testified further as follows:

Presiding Examiner: Are there questions of the witness by any of the applicants?

Mr. Voight: Continental has no questions.

Mr. Foster: None at this time, Mr. Examiner.

Presiding Examiner: Very well.

Cross-examination by counsel for the Brooklyn Union Gas Company and Long Island Lighting Company, interveners.

Mr. Russell: I have a few questions, Mr. Examiner.

Presiding Examiner: Very well.

Cross-examination by Mr. Russell:

Q. Mr. Witmer, I think probably my questions are in the nature of clarification and not particularly cross-examination. They relate primarily to the statement, or the answer that you made to Mr. Littman's question at the bottom of page 49 of the transcript and your answer appearing on page 50, namely:

"Do any of the provisions of these contracts affect or trigger any of Tennessee Gas Transmission Company's existing favored nations or renegotiation clauses in its other gas purchase contracts?"

And your answer to that question was "no."

Now, in the contracts that were submitted here yesterday, [174] they refer to the East Cameron, West Cameron and Vermilion areas. May I ask: does Tennessee have any existing contracts to purchase gas in Cameron and Vermilion Parishes, in Louisiana? A. Yes, sir, Tennessee does.

Transcript of Hearing Held March 1, 1957 [Vol. II]
William W. Witmer—Recalled—Cross

Q. Do those contracts contain either two-party favored nations clauses, three-party favored nations clauses, or price redetermination clauses? A. They contain favored nations clauses whereby Tennessee will pay the seller in each particular contract the same price Tennessee pays to any other seller from whom it buys gas in that particular area.

That is probably what you are referring to, is a two-party favored nations clause.

Q. Yes. A. And they do contain—most of them contain price redetermination clauses based upon the three highest prices being paid in the specified areas at certain intervals during the term of the contract.

Q. Could you tell me what area of Louisiana those contract clauses operated in? A. They operate in, I believe it is seven parishes, Mr. Russell, the southernmost of which are Cameron and the parish immediately to the east of Cameron Parish. I don't recall the names of all the parishes right now.

[175] Q. What is the price Tennessee is presently paying for gas under those contracts in that area? A. It is slightly over 10 cents, at 15.025.

Q. Would you refer now to the transcript, pages 107 and 108, where the transcript contains the substance of the letter that you wrote to Continental Oil Company, dated August 17th, 1956, and the portion of that letter that I am going to refer to starts at the bottom of page 107, and reads as follows:

"In the event it is determined by statute or by judicial process that the Federal Power Commission does not have control over prices which producers such as Continental are allowed to charge for gas sold to gas transmission

companies such as Tennessee during the term of the contract, or in the event the Federal Power Commission accepts and allows to go into effect rates which producers are allowed to charge for gas sold as a result of the operation of favored nations clauses and price redetermination clauses in gas purchase and sales agreements similar to the above-mentioned contract, with respect to provisions affecting price, quantity, quality and delivery, Tennessee agrees to amend said contract and add thereto a favored nations clause and price redetermination clause substantially similar to and like those contained in the gas purchase and sales agreement dated January 31, 1956, between Tennessee and Continental covering gas located [176] in the West Delta Area, Gulf of Mexico."

Now, could you tell me what the provisions are in the favored nations clause and the price redetermination clause in the contract between Tennessee and Continental dated January 31, 1956, covering the sale of gas in the Delta area? A. I don't have a copy of that contract with me, Mr. Russell. I can tell you generally.

Q. Generally will be satisfactory. A. The favored nations clause in the contract to which you referred is a two-party favored nations clause and refers to the West Delta Area, as I recall, which is an offshore area similar to—at least, it is designated similarly to the offshore areas involved in the four contracts in these consolidated proceedings.

The price redetermination clause is exactly as those existing in most of the other Tennessee Gas purchase contracts, which is based upon the three highest prices being paid at the time the price redetermination is set for.

Transcript of Hearing Held March 1, 1957 [Vol. II]
William W. Witmer—Recalled—Cross

Q. What is the area covered by the favored nations clause in which that clause is operative? A. You mean in the Delta contract?

Q. In the Delta contract, yes. A. To the best of my recollection, Mr. Russell, that is the area in which Tennessee is presently paying 17 cents [177] at 15.025 pounds per square inch absolute for gas, is composed of, I believe, either four or five parishes in Southeastern Louisiana, none of which are contiguous to or close to the area involved in the contracts which are the subject of these consolidated proceedings.

Q. Then, I am not clear. You would incorporate in these new contracts a favored nation clause but for a different area than specified in the Delta contract. A. No, sir, you didn't read far enough in the letter. The next sentence, if I may read it—

Q. I am going to go into the next sentence. A. Well, that is the answer to your question.

Q. So that all that that meant in the reference to the Delta contract, that it would be a similar favored nation clause but not covering the same operative area as the Delta contract covers, is that right? A. Well, it says just what you read, substantially similar, yes, sir.

Then, as I stated, it says below the area in which these clauses will be operative will be the area located south of the red line plotted on the official leasing maps attached hereto.

Mr. Russell: Mr. Examiner, I wonder if I might have a copy of that map that is referred to, the one that has the red line plotted on it?

[178] Presiding Examiner: Have you seen it?

Mr. Russell: No, sir, I have not.

Presiding Examiner: It was available to all counsel in the room, Counsel.

Mr. Russell: I am going to ask a question about it. Isn't it possible to have it here? I asked Mr. Voight and he assured me it would be here.

Presiding Examiner: All right.

Mr. Woodfin: I furnished a copy to Mr. Ryan yesterday. He has it there. All he has to do is hand it to Mr. Russell.

Mr. Ryan: Yes.

Mr. Russell: I don't have a red line marked on it.

Mr. Woodfin: That is a photostat. If you look, you will see a darker line on the top. This is the red line (indicating).

Mr. Russell: This is the red line?

Mr. Woodfin: That is right.

By Mr. Russell:

Q. Mr. Witmer, I wonder if you could tell me what is the significance of this red line that is referred to during the testimony and as indicated on this map, which was attached to this letter? A. To clear this whole thing up, Mr. Russell, that red line is where we—where I felt the outermost state boundary line might be set. So it was drawn on the map to [179] keep these clauses, if they are ever inserted into the contracts which are the subject of these proceedings, from triggering any of Tennessee's favored nation or price redetermination clauses in its Southwestern Louisiana pricing area.

And, as the rest of the letter states, that is the way the favored nation and redetermination clauses would be

inserted and used. And to make a long story short, if they are inserted they will not trigger any of Tennessee's other contracts.

Q. The area north of the red line would be an area that would be covered by the existing contracts, favored nation clause area? A. Well, Mr. Russell, it is not quite that simple. That area out in the water north of that red line, and I think the northernmost line is probably representing the shore line of the State of Louisiana, that area between the shore line and the red line is still in dispute, so to speak, between the State of Louisiana and the Federal Government. But at any rate, it might become state property.

Q. And if it does? A. If it does, then it will not fall within the area contemplated by the clauses which are covered by this letter.

Q. But would it fall within the area covered by the favored nations clauses in your existing contracts? [180] A. That is a good question. I don't know whether it would or not, because the favored nation clauses as they exist in those contracts in the Southwestern Louisiana pricing area refer only to parishes, as the parishes were constituted at the date of the contract.

Now, that is a question I, or I doubt anyone else could answer because we don't know how far the state boundary goes out into the water.

Q. Do the parish boundaries, are they coextensive with the state boundary? A. I don't know.

Q. Referring on to a further sentence in your letter, on pages 108 and 109, the letter says:

"However, if during the term of said contract the boundary dispute relating to title to the submerged lands

located off-shore of the State of Louisiana between the United States and the State of Louisiana is judicially determined or settled, Buyer and Seller agree that effective as of the date said boundary dispute is so determined, the favored nations and redetermination clauses referred to immediately above will be operative in the areas located South of the most Southerly boundary line of the State of Louisiana so determined."

If, as a result of the settlement of that dispute, the boundary line of the State of Louisiana was determined to be south of this red line, I take it that your favored nations [181] area in this contract would be moved further south? A. That is what that sentence says, yes, sir.

Q. And the area north of that, if the boundary line of Louisiana is determined in this dispute to be further south of this red line, the area north of the boundary line of Louisiana so determined might possibly be within the favored nations clause of your existing contracts in Cameron and Vermilion Parishes? A. Possibly, yes, sir; it may be and it may not be.

Q. Isn't that the reason why you moved the line south with the boundary line of the State of Louisiana moving south? A. Certainly, that is the reason.

What I meant by that is the portion of the State of Louisiana if there is any determined to be so that lies south of the shore line and in the water, may or may not be in the parishes, you see. That is why I qualified my answer.

Q. I understand that, Mr. Witmer. But if that is not determined, I mean if it is not clear in your own mind, how could you answer Mr. Littman's question so positively? Because it seems to me if the boundary line of

the parishes moves south, as the boundary of the State of Louisiana moves south, then it would be within those parishes and it might be covered by your [182] favored nations clause in your existing contracts. A. Mr. Russell, you just read the sentence that says these clauses won't operate in the State of Louisiana. It was the last sentence you read. I don't know how to make it any clearer than that sentence says:

". . . if during the term of said contract the boundary dispute relating to title to the submerged lands located off-shore of the State of Louisiana between the United States and the State of Louisiana is judicially determined or settled, Buyer and Seller agree that effective as of the date said boundary dispute is so determined, the favored nations and redetermination clauses referred to immediately above will be operative in the areas located South of the most Southernly boundary line of the State of Louisiana."

Q. That is as to this contract. But I am talking about your existing contracts. Won't the favored nations area in those be expanded as the boundaries of the parishes are expanded southward?

Mr. Foster: I object to this.

The Witness: What difference will it make?

Presiding Examiner: Just a minute.

Mr. Foster: I object. It obviously relates to what may happen in other contracts not involved in this proceeding and not related to this proceeding.

Presiding Examiner: I am convinced he has answered [183] to the best of his ability, Counsel.

Transcript of Hearing Held March 1, 1957 [Vol. II]
William W. Witmer—Recalled—Cross

By Mr. Russell:

Q. The area covered by this dispute, Mr. Witmer, might or does include the area in which these leases are in existence, does it not? A. I understand that it does.

Q. In fact, in the letter that starts on Transcript pages 115 and 116 where you are talking about the gathering taxes, it specifically says that some of the leases are in the area which is under dispute between the Federal Government and the State of Louisiana. A. I agree, I say I understand that, too.

Presiding Examiner: May I have that question and answer?

(Question and answer read.)

Presiding Examiner: You mean north of that so-called red line?

The Witness: Mr. Examiner, he had asked me the prior question—

Presiding Examiner: I am not interested in what he has asked you, now.

The Witness: I don't understand your question, sir.

Presiding Examiner: Are any of the blocked-in leases on Exhibit 1 north of that red line?

The Witness: No, sir.

[184] Presiding Examiner: Are any of the leases subject to the applicants' contracts with Tennessee Gas in this proceeding north of that red line?

The Witness: No, sir.

Presiding Examiner: I didn't understand—

Mr. Russell: Mr. Examiner, the point is that

the area in which these leases are located is the area in which there is a dispute between the Federal Government and the State of Louisiana as to the boundary line of the state.

Presiding Examiner: You are now talking in terms of the West Cameron area, and the East Cameron area and the Vermilion area as a whole?

Mr. Russell: That is right.

Presiding Examiner: But not with respect to any leases that are involved under the contracts in these proceedings?

Mr. Russell: Yes, I am talking about the leases, they are in that area which is involved in the dispute, as set forth in the letter on page 116.

Presiding Examiner: They are not in the disputed area.

Mr. Russell: They are. On page 116—

Presiding Examiner: Let's not get into a direct contradiction.

The witness has just testified and if you disagree with that testimony, you should straighten it out.

Mr. Russell: He didn't disagree with the question I [185] asked him.

Presiding Examiner: All right.

Mr. Russell: The point of the thing is, Mr. Examiner, that boundary line moves south if the State of Louisiana is determined to be further south than it is, as plotted by this red line. That area is expanded to the south, if so, it becomes part of the parishes of Cameron and Vermilion, possibly.

Transcript of Hearing Held March 1, 1957 [Vol. II]
William W. Witmer—Recalled—Cross

Presiding Examiner: To the end of the Continental shelf?

Mr. Russell: It may be. That is what my preliminary questions of this witness were.

Presiding Examiner: There is nothing in the record on the area of the dispute.

Mr. Russell: Let's have the record read back on the questions I have asked.

Presiding Examiner: No.

Mr. Russell: That is exactly what I brought out through this witness.

Presiding Examiner: All right. If you did, I will find it.

Mr. Russell: All right.

The point is, as that line is moved south, if the state boundary is moved south, it may involve the price of gas being paid under these contracts being in the area covered [186] by the favored nations clauses in Tennessee's existing contracts, and thereby have a triggering effect on them.

Presiding Examiner: Very well.

What is the nature of Louisiana's claim?

Mr. Russell: Maybe counsel for the applicants could answer that.

Presiding Examiner: No. That is what you assured me was very definitely in the record.

Mr. Russell: I said there was a dispute. I will read the part of the letter that says so.

Presiding Examiner: I can read that, counsel. Let's get along.

Transcript of Hearing Held March 1, 1957 [Vol. II]
William W. Witmer—Recalled—Cross

By Mr. Russell:

Q. Mr. Witmer—

Presiding Examiner: Wait just a minute.

I do want to straighten something out.

Will you refer to page 116?

The Witness: Yes, sir.

Presiding Examiner: Now, as I have understood your testimony here just a moment ago, it would be in conflict with what is stated between lines 7 and 11, to the effect that the parties realize that certain of the leases dedicated to the contract are so located that the lands covered by such leases may be claimed, both by the State of Louisiana and the Federal Government?

[187] The Witness: No, sir, it is not in conflict. You asked me if any of the leases were located north of the red line on that map, and they are not.

The red line, however, is not the southernmost boundary of the area in dispute.

Presiding Examiner: What is the southernmost boundary?

The Witness: I don't know. I don't know how far Louisiana is claiming out into the sea, probably to the end of the Continental Shelf, I suppose.

By Mr. Russell:

Q. Mr. Witmer, would you refer to page 112 of the transcript? A. Yes, sir.

Q. That page of the transcript is part of what appears to be an agreement between Transcontinental and Tennessee dated August 20th, 1956—Tennessee and Continental, excuse me.

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William W. Witmer—Recalled—Cross

Now, may I direct your attention to paragraph 3 appearing on page 112, which states:

"In the event satisfactory certificates have not been issued by April 1, 1957, Tennessee will deliver to Continental, as Operator, at Continental's option, to be exercised at any time after April 1, 1957, but before January 1, 1958, sufficient steel pipe, fittings, valves, and connections to construct the pipeline or pipelines pursuant to the said [188] plans and specifications (Item 2) from such delivery point to shore."

Can you tell me, Mr. Witmer, what is the estimated cost of the pipe and fittings and valves that are referred to in that paragraph? A. Yes, sir. I put those in the record on direct. I will repeat them, if you wish.

Q. Is it part of the 16 million that you referred to yesterday? A. Yes, sir.

Q. Does the same thing apply to the facilities referred to in paragraph 4, or is that something in addition to the cost that you mentioned yesterday? A. It is the same thing, yes, sir.

Q. May I direct your attention to page 113, paragraph 7 of that agreement.

"In the event Continental exercises the rights herein granted by Tennessee under Items 3 and 4, in whole or in part, it is agreed that the gas purchase agreement between Tennessee and Continental will not be terminated by failure of a party to secure satisfactory certificates prior to January 1, 1958."

Now, is it your understanding of that paragraph that in the event that Continental exercises the option that it has under paragraphs 3 and 4, that the time in which Tennessee will have to secure a satisfactory certificate is

[189] January 1, 1958? A. If they do elect to exercise those options under 3 and 4 and receive all those materials from Tennessee, I think that is correct.

Of course, I don't know whether they are going to or not.

Q. Directing your attention, Mr. Witmer, to pages 109 and 110 of the transcript, I take it that Continental has asked you to forward all the plans and specifications that are referred to in that letter, because Tennessee has not secured a certificate by February 1st, 1957, is that correct? A. Mr. Russell, I received this letter from Continental but I have not delivered any plans or specifications to Continental. I think perhaps they might have sent me that letter just to, in a manner of speaking, maybe to preserve their rights or something. But I have not furnished them any plans and specifications.

Q. It really is to preserve their rights, as you put it, which are set forth in paragraph 2 of the agreement transcribed in the record on pages 111 and 112, is that correct? A. Well, I don't know, they sent me the letter. I shouldn't have said that, I guess, it is a supposition on my part. I don't know why they sent me the letter.

I just say that I have not replied to the letter nor [190] have I furnished them any plans and specifications.

Q. That paragraph 2 says that if you don't receive a certificate by February 1st, 1957, that at Continental's option you have to furnish certain plans and specifications? A. That is correct, yes, sir.

Q. That is what they have asked for? A. Yes, sir. They sent me that letter.

Transcript of Hearing Held March 1, 1957 [Vol. II]
William W. Witmer—Recalled—Cross

Mr. Russell: Pardon me, Mr. Examiner, a moment. I just have one other question, Mr. Examiner.

In reading the record last night, it seemed to me there was some confusion about the provision in the agreement relating to the substitution of gas from the Delta area. It is paragraph 3-J of the agreement, and I would like to ask Mr. Witmer his understanding of the purpose of that substitution agreement, what his understanding is.

Presiding Examiner: Very well.

By Mr. Russell:

Q. Could you tell me that, Mr. Witmer? A. Yes, sir. My understanding of that particular section—and incidentally I wrote it—under the West Delta contract between Tennessee and Continental and also under the West Delta contracts between Tennessee and the others of the producers who are applicants in these consolidated proceedings, there is dedicated to Tennessee Gas reserves which [191] are particularly rich in distillate, condensate, whatever you want to call it. In fact, it is my understanding that that particular reservoir is so saturated that it is saturated at reservoir conditions.

Now, any production, probably, from that reservoir, would result in retrograde condensation in the reservoirs. So there is a good possibility that the State of Louisiana, from whom those leases covering that reservoir were acquired, might require the producers to cycle that gas and recover those liquids, or the producers may at their own volition cycle the gas and recover those liquids.

In that event, the deliveries to Tennessee under the West Delta contracts would be curtailed to the degree that gas which would have been delivered to Tennessee from that reservoir will not be delivered at that time, but would be delivered at a later time after the cycling operations had been completed.

To enable Tennessee to receive the amounts of gas for which it has contracted, and also to give the producers the right to go ahead and deliver the total amounts for which we have contracted, I then drew up this provision which in my interpretation allows them to deliver gas from the reserves covered by the contracts which are the subject of these proceedings, in place of gas which would have been delivered had the cycling operations not been commenced [192] from the reservoirs that I mentioned in the West Delta area.

The West Delta contract provides, of course, though, that when the cycling operations are completed, the gas that is returned to the reservoir will then be delivered to Tennessee. So what it amounts to, it is not really a substitution; they merely pick up the curtailed deliveries or the deliveries that would have been curtailed in West Delta and deliver gas from these reserves in place of that, and then at some later date the gas in the West Delta area will then be delivered in place of gas reserves that would have remained in the ground during that time under these contracts.

Is that sufficiently clear?

Q. And that the price to be paid for gas delivered under these contracts would be the price provided in the contract, when the Delta gas is cut back, so to speak, and additional quantities are delivered under these contracts?

A. I will put it this way: the gas to be delivered or the gas that is dedicated under this contract will be sold to Tennessee at the price provided for in this contract, and the gas dedicated to Tennessee under the Delta contract will be sold to Tennessee under that price, so it all comes out the same.

Mr. Russell: That is all I have, Mr. Examiner.

I think such reference has been made to this map [193] which was attached to the letter and forms an important part of the letter, as I see it, because the letter itself refers to the red line that is shown on here, I think this map should be made a part of the record.

I will ask to have marked for identification, if it is all right with Mr. Ryan, the copy that I have in my hands.

Mr. Ryan: It is all right with me.

Mr. Russell: I only have this one copy.

Presiding Examiner: I tried to avoid putting anything unnecessarily into the record. Do you have any objection?

Mr. Woodfin: I didn't want to object, but I can see that it serves no useful purpose to have the thing in the record. It is a conditional letter that may become effective in the future if the Federal Power Commission has no jurisdiction. It certainly can't affect anything in this proceeding at this time, no matter where the red line is.

I can't see that it is relevant or material to this proceeding to have it in this present certificate case. That would be a matter which would come up in, no

telling, ten years from now, if it ever became effective at all.

Presiding Examiner: Can you give a general description of where that red line is located?

Mr. Geneau: Might I interpose, Mr. Examiner, and say perhaps that red line could be put on Exhibit 1, here.

Mr. Russell: That would be satisfactory.

[194] Presiding Examiner: Can you do that? Take a look at both of them and see if you can do it.

The Witness: Yes, sir, I can.

Mr. Russell: That will be satisfactory with me, Mr. Examiner. I will withdraw my offer of having it marked for identification.

Presiding Examiner: Very well.

Mr. Witmer, will you read the definition, define that red line by reference to the blocks set forth on Exhibit 1?

The Witness: Yes, sir.

Commencing at the westernmost boundary of the West Cameron area offshore of the State of Louisiana, the line begins at the southern boundary of Block 53 and continues in an easterly direction to the southwest corner of Block 67, at which point it turns—

Presiding Examiner: Just a moment.

Block 67.

The Witness: —to the southwest corner of Block 67.

Presiding Examiner: You started where?

The Witness: On the southwest corner of Block 53.

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William W. Witmer—Recalled—Cross

Presiding Examiner: Southwest or northwest?

The Witness: Southwest.

Presiding Examiner: I have it.

All right.

The Witness: From the southwest corner of Block 67, [195] the red line turns south and goes to the southwest corner of Block 70.

Presiding Examiner: What corner?

The Witness: Southwest.

Presiding Examiner: Southeast?

The Witness: No, sir.

Presiding Examiner: I have it, very well. You are right.

The Witness: From which point the line turns east and goes to the southeast corner of Block 69, from which point the line turns south and runs contiguous to the boundary line between West and East Cameron areas to the southwest corner of Block 28, East Cameron area, from which point the line runs east to the southeast corner of Block 26, East Cameron area, from which point the line turns south and runs to the southwest corner of Block 32, East Cameron area, from which point the line turns east and runs to the southwest corner of Block 34, East Cameron area, from which point the line turns south and runs to the southwest corner of Block 41, East Cameron area, from which point the line turns east and runs to the southeast corner of Block 39, East Cameron area, from which point the line turns south and runs to the southeast corner of Block 87, East Cameron area.

Mr. Woodfin: That is 57, I believe, Mr. Examiner.

[196] The Witness: Is it? I can't read it very well.

That is correct. It runs to the southeast corner of Block 57, from which point the line turns east and runs to the southeast corner of Block 56, from which point the line turns north and runs to the southwest corner of Block 41, Vermilion area, from which point the line runs east and runs to the southeast corner of Block 49, Vermilion area, from which point the line turns north and runs to the southwest corner of Block 50, Vermilion area, from which point the line turns east and runs to the southeast corner of Block 50, Vermilion area, which is the termination point of the red line.

Mr. Russell: That is all I have, Mr. Examiner.

Thank you, Mr. Witmer.

Presiding Examiner: Lake Shore Pipe Line Company?

Mr. Ryan: Yes, sir.

By Mr. Ryan:

Q. Mr. Witmer, do you know of any additional amendments or supplements entered into between the applicants here and Tennessee, which relate in any way to the gas involved here? A. No, sir, I don't consider these, though, to be amendments.

Q. Do you know of any agreements entered into between the parties affecting the gas involved here? [197] A. No, sir.

Q. Would you consider these agreements affecting the gas involved in these proceedings? A. On the conditions set out in the agreements perhaps, yes, sir.

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William W. Witmer—Recalled—Cross

Q. Mr. Witmer, referring to transcript page 112, which is part of the agreement between Continental and Tennessee dated August 20th, 1956, there is reference there to the plant of Continental or Cities Service Refining Corporation in Lake Charles, Louisiana.

Is that, to your knowledge, a cycle plant or are there two plants? A. I don't know, Mr. Ryan.

Q. Would you be able to tell me what kind of plant or or plants they are? A. No, sir, I would not.

Q. Would you be able to point out on Exhibit 1 the location of Lake Charles, Louisiana, if it is indicated on that map? A. Well, I am certain if it is indicated on the map I can point to the name.

Q. Would you do that for me, please? A. May I have the map?

Q. Yes, sir. A. I don't see it indicated on the map, Mr. Ryan.

[198] Q. Is it within the areas shown on the map? A. I think it is.

Q. Do you have any idea approximately where it would be? A. It is approximately on the route of our proposed pipeline from the shore line to Kinder, Louisiana.

Q. Do I understand, Mr. Witmer, that Lake Charles is located approximately along Route 90 in Louisiana, U. S. Route 90? A. U. S. Route 90 goes through Lake Charles, yes, sir.

Q. That is the route which is referred to in the contract, is that correct? A. That is correct.

Q. Mr. Russell asked you some questions about the contract of August 20th, 1956 between Tennessee and Continental, which is in the record at pages 110 to 114.

I think perhaps this question ought to be asked of counsel for the applicants.

Mr. Russell: Are they of the opinion that in the event Continental exercises its option to construct the facilities under this contract, will these facilities not be subject to the jurisdiction of the Federal Power Commission?

Mr. Woodfin: Are we required to answer that question, your Honor? I don't see what our opinion in this matter will do in that respect, but if he wants a categorical [199] answer to it, my opinion is it would not be subject.

Mr. Ryan: That is exactly what I was after, Mr. Woodfin.

Mr. Geneau: Might I have the question reread?

Presiding Examiner: I don't think we need spend any time on that.

Hold your tape, Mr. Reporter, until the recess, and then read it to counsel.

By Mr. Ryan:

Q. Mr. Witmer, directing your attention to transcript page 115 and 116 and 117, there is contained there a letter agreement between Tennessee Gas Transmission Company and Continental Oil Company which relates to payment of gathering tax.

I am a little bit confused by that. I wonder if you could explain to me basically what tax Tennessee is going to have to pay to these producers? What is the amount of that tax? A. It amounts to one cent on a pressure base of 15.025 pounds per square inch absolute.

Q. And that is irrespective of whether these lands are eventually determined to be State of Louisiana lands or Federal Government lands, is that correct? A. Yes, sir, they are liable to either government for the one cent.

Q. Mr. Witmer, what are the take-or-pay-for provisions [200] of the contracts which are here involved, as far as Tennessee is concerned?

Mr. Littman: I object to that, Mr. Examiner. That is all set forth in the contracts.

Presiding Examiner: Is there any doubt in your mind about that?

Mr. Ryan: Yes, sir, there is.

I asked Mr. McKinley questions along this line, and he indicated to me that my assumption was incorrect, my assumption being that the take-or-pay-for is 80 percent. I am merely trying to find out if that is true or not.

Mr. Littman: I simply suggest if counsel has some matter or words or language of uncertainty in the contract he would like to have cleared up, why, I am sure the witness would be perfectly willing and glad to do it.

Presiding Examiner: I think it would be shorter to let the witness answer.

You may answer.

The Witness: I am a little confused. Should I summarize the provisions?

Presiding Examiner: No, no.

The Witness: Then, what is the question?

By Mr. Ryan:

Q. I will refer you to the provisions of the contract that I have in mind. [201] A. O. K.

Q. Paragraph 3 (ii), that should be 3-A (ii), and paragraph 3-D-3. A. Mr. Ryan, the Item (ii) of subsection A of Section 3, which I believe is the first provision you referred to, provides that the minimum quantity to be taken or if not taken to be paid for under this contract by Tennessee is on a reserve ratio basis, which is one million cubic feet per day for each eight billion cubic feet of original recoverable gas dedicated to Tennessee under this contract.

That commences or becomes effective on November 1, 1958, and provides, as I say, for the minimum take-or-pay-for quantity during the remainder of the term of the contract.

Now, Item 3 of subsection D of Section 3 has nothing to do with the take-or-pay, whatsoever.

Presiding Examiner: What would you expect to be taking or paying for under 3-A (ii) as of that time, November 1, 1958?

The Witness: If the original recoverable reserves remain exactly the same as they are now, or were at the time they were compiled or in work by Mr. Born, and as I recall they are equal to one trillion six hundred seventy-three billion, the minimum take-or-pay-for daily quantity under this contract would be 25 percent of 209 million feet [202] a day, the 25 percent representing this particular producer's share of the whole.

Back to Item 3 of subsection D of Section 3—well, let me say this: Subsection D has nothing to do with the take-or-pay-for provisions, whatever.

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William W. Witmer—Recalled—Cross

By Mr. Ryan:

Q. Subsection D does permit you to fluctuate from the minimums provided— A. I would like to finish my answer, Mr. Ryan.

Presiding Examiner: Finish your answer.

The Witness: As I stated, subsection D has nothing to do with the take-or-pay provisions but provides the maximum quantity Tennessee can call on the producers to furnish.

The maximum quantity may be any one of the three quantities or may be a quantity as determined by any one of the three items under subsection D, whichever one is applicable at the time.

So, there is a considerable swing in the contract between the minimum take-or-pay for quantity which Tennessee is obligated to take or pay for if it does not take, but which it has the right to make up later, and the quantity as determined by subsection D which is the maximum Tennessee can ask the producer to furnish.

By Mr. Ryan:

Q. Subsection D provides three alternatives, is that [203] correct? A. It provides three methods by which the maximum quantity may be determined, yes, sir.

Q. That is right. And the smallest of those is applicable, is that correct?

Presiding Examiner: That is stated in the contract.

The Witness: Yes, sir, that is correct.

Mr. Ryan: I am just establishing a predicate, Mr. Examiner.

By Mr. Ryan:

Q. Now, assuming that subsections 1 and 2 of subsection D were greater than subsection 3 of subsection D, then what would the range be between the minimum take-or-pay-for and the maximum takes which Tennessee could take? A. At what time during the term of the contract?

Q. From and after November 1, 1958. A. In that case, and in case the reserves are the same as they were at the time Mr. Born compiled his figures, the maximum quantity, assuming all those things, that Tennessee could get—

Q. I am seeking a ratio figure, Mr. Witmer. A. I am attempting to calculate it for you, Mr. Ryan.

Q. All right. A. Approximately 250 million feet a day at a pressure base of 14.73 psia.

[204] Q. And what is the ratio between the minimum figure which you just previously gave us and this maximum figure which you just now read?

Mr. Littman: I object to that. That is purely arithmetical.

Presiding Examiner: I think so.

Mr. Ryan: Your Honor, all I am trying to do is try to establish what the minimum take-or-pay-for is under this contract.

Presiding Examiner: Objection sustained.

By Mr. Ryan:

Q. Subject to check, Mr. Witmer, will you accept my computation that it is an 80-percent ratio? A. No, sir.

Q. Do you have any other opinion as to what it might be? A. As to what what might be?

Q. The ratio between those two figures. A. What two figures—

Mr. Littman: Mr. Examiner, I object—

Presiding Examiner: Objection sustained.

Mr. Ryan: He didn't even get the chance to object, Mr. Examiner.

Presiding Examiner: Yes, he did.

Mr. Littman: I am a fast objector.

[205] By Mr. Ryan:

Q. Did you negotiate the West Delta contracts for Tennessee? A. Yes, sir.

Q. Are you familiar with the provisions of those contracts? A. I don't have it before me. I negotiated the contract.

Q. Let me hand you a copy of the contract dated January 31st, 1956, between Tennessee and Continental for dedication of reserves from the West Delta area.

Referring to page 5 of that contract, Mr. Witmer, the top of the page, there is a paragraph No. 3 which is part of Section 3-D. Is that comparable to paragraph 3-D-3 of the contracts which are involved in this proceeding? A. Well, assuming this is the contract as you describe it, I would say yes.

Q. And does not the paragraph that I referred to in the West Delta contract provide for a greater take than does the comparable paragraph in the contracts involved in this proceeding?

Mr. Littman: Mr. Examiner, I object, unless counsel can indicate the relevance of this question. I fail to see it has any pertinence to the issue here. We have all kinds of contracts all over this southern, [206] southwestern—and they all have various provisions about who takes how much gas. I would like to know wherein it is relevant here.

Presiding Examiner: What is the purpose, counsel?

Mr. Ryan: Basically, Mr. Examiner, the purpose is to establish that the West Delta contract was entered into between Continental and the other three applicants here and Tennessee as buyer; it provides for the sale of offshore gas; it is the only contract I am aware of between these identical applicants and the identical purchaser for offshore gas.

I think it forms the basis for a very definite comparison of the terms and provisions of the contracts. I would show by it that outside of the price provisions, which in the West Delta area are considerably lower, there are basically no differences in the two contracts, except that the take-or-pay-for provision in the present contracts is higher than that in the West Delta contracts.

Mr. Littman: We are going to be here a long time if we are going to go through all the provisions of some other contract and compare it.

Mr. Ryan: I don't propose to go down all the provisions of the contract, Mr. Examiner.

Presiding Examiner: There was an objection made yesterday about the Commission's ruling as

to going into rate [207] features, the rate levels in certain proceedings.

Mr. Ryan: I very emphatically disagree with the conclusion that Mr. Foster drew, if that is what the Examiner has reference to. I think this Commission has, in fact, conditioned certificates issued to producers reducing the price. I think that is a sufficient answer.

Presiding Examiner: You are thinking of Signal Oil. But in that case, there was a question of holding the line.

Mr. Ryan: Mr. Examiner, we have maintained, we have stated that this price is higher than any price that we know of anywhere in the southwest area.

Presiding Examiner: Do you have Opinion 299 or 301 there?

Mr. Littman: Mr. Examiner, I have practically all of them here on this subject. I think one of the most—

Presiding Examiner: Which one are you referring to?

Mr. Littman: I was just about to read one small excerpt from Opinion 287, which I think epitomizes the Commission's holdings on this whole broad subject.

Presiding Examiner: Just a minute.

Mr. Ryan: Is that the Tamborello Decision, Mr. Littman?

Mr. Littman: Yes, sir.

Mr. Ryan: I thought we were referring to Signal Oil.

Mr. Littman: This is the general rule, as I understand it, to have been announced by the Commission, and it has adhered strictly to this rule throughout all the subsequent [208] cases, including Signal Oil, and it is this, and I quote page 5 of the Tamborello Case, Opinion 287.

First, the Commission said it had authority, it had the right to go into rate questions, to be sure, in certificate proceedings. It first said that, and then went on to say this:

"However, because the economic and other conditions presented in certificate cases filed by independent producers are substantially different from those presented in certificate applications filed by interstate pipe line companies, the Commission has not deemed it prudent to expend the time required to resolve rate issues at this stage, nor has it found it practical to inquire into the reasonableness of producer rates in all producer-certificate proceedings. In the order below, which we are adopting, paragraph I is a standard reservation over the Commission's unquestioned right under the Act upon its own motion or upon proper complaint to inquire later into the reasonableness of the rates proposed to be charged by the producers. Thus, the interests of the distribution companies and the consumers are protected against unlawful rates. At the same time, this procedure permits the more efficient and rapid handling of producer-certificate applications without the complicating considerations of the producer rates."

Now, the Commission has adhered strictly to this

rule, [209] right straight down the line with the possible—and has refrained from setting forth rate conditions in a certificate application with the single exception of the Signal Oil case, which case I submit is sui generis. It was a very unusual, very peculiar case, where the Commission found on the evidence that there was a complete disruption in the immediate area wherein other producers were selling gas, and a good deal of gas was being sold intrastate, and where there was shown to be a complete economic disruption of the pricing formulas in those areas.

Now, in that one special, specific, peculiar case, the Commission said that even then it was not going to fix what it would call a just and reasonable rate or make a final inquiry into a just and reasonable rate, but it would simply pare down that rate to its rates being charged in that immediate area.

Now, here, Mr. Examiner, as in the Natural Gas Pipe Line decision, which is the most recent one handed down, Opinion No. 299, the Commission pointed out that any possible effect on rates in other areas was immaterial.

Presiding Examiner: Where did it say that?

Mr. Littman: It said that in the Natural Gas Pipe Line decision. It said, and I quote, "these circumstances"—

Presiding Examiner: Where is that, counsel?

Mr. Littman: On page 17 of the mimeographed copy of [210] the Opinion 299, in the matter of Natural Gas Pipe Line Company of America, et al.

"Further, Oklahoma Natural"—I might say Okla-

homa Natural there was an intervener that was objecting to the granting of the certificate, one of the price conditions in the certificate.—

"Furthermore, Oklahoma Natural purchases its gas in Oklahoma, not in the areas in Texas covered by the contracts between Natural and its producers, and the prospect of price changes to Oklahoma Natural in consequence of the price proposed under Natural's producer contracts is too remote to be a matter of paramount concern in this case."

And in the most recent decision on this subject, in Houston Texas Gas and Oil Corporation—Coastal Transmission Corporation, Opinion No. 301, the Commission adhered to the view which I have expressed, namely, that it would not go into the matter of rate-making or rate-fixing in a certificate proceeding such as this.

Presiding Examiner: Could I see that?

Mr. Littman: Yes, I have all these opinions, Mr. Examiner. Do you mean the Houston case?

Presiding Examiner: Yes. I have Natural Gas Pipe.

Mr. Littman: Here is a petition—here is the order denying the petition for reconsideration in the Houston Texas—Coastal Transmission case.

[211] Presiding Examiner: Just a minute

Mr. Simons: Mr. Examiner, I would like to be heard on this.

Presiding Examiner: It may not be necessary. Just a minute.

Mr. Simons: I hope it is not, sir.

Presiding Examiner: I don't see anything in these opinions that goes to the question of what the effect will be on the consumer to be served from the source of supply.

The matters that I see in these opinions, just taking a quick look, relates to an objection made on behalf of consumers in other areas, as to what effect would be suffered by such consumers because of the effect in the field area of the proposed prices of gas to be served to an entirely different group of consumers.

Mr. Woodfin: Mr. Examiner—

Presiding Examiner: And there the question of remoteness was involved and also continuing supervision.

Mr. Littman: Let me answer that in this way: We have any number of cases. The Tamborello case I first cited and quoted from, Opinion No. 287, in that case various distribution companies served by the pipe line company involved in the case, namely, Transcontinental, and the Public Service Commission of the State of New York, advanced objections that the Commission should require the elimination from the [212] gas sales contracts of the producers, certain escalation clauses and deny the certificates unless the producers file and prove that their initial rates are just and reasonable.

Now, in that case, you had the same type of interveners, in fact, the same interveners in some respects as we have here.

Now, it is true in some of the other cases, the ones you just referred to, such as Coastal and the

Natural Gas Pipe Line case, there were involved in the first of the two I mentioned consumers who claimed they would be affected by price rises that would affect other pipe lines served by them.

But in the Tamborello case, which sets forth the general proposition which I quoted, had the identical type of interveners that we have here.

Presiding Examiner: I am not so sure about applying that authority here. But what is in my mind is that there is absolutely no suggestion on this record that Tennessee should not be permitted to take gas from these reservoirs.

The question is wholly one about price.

The Examiner has heard no suggestions—there has been no intimation made to him that there is pending any price increase by Tennessee to its consumers, based upon the cost of this gas. And even if there were such intimation, that issue would be decided in another case.

[213] Mr. Ryan: There couldn't be, Mr. Examiner. They haven't hooked up the gas. How are they going to charge their customers until they have started to take it?

Mr. Littman: It could be.

Mr. Ryan: The whole nub of our position in this case, Mr. Examiner, is this: we have made a contention that this gas is going to be a very sizable portion of Tennessee's gas supply. As such, it is going to have a very definite effect upon the customers and upon their rates.

Now, Tennessee has filed an application in G-11107, in which they have asked for authority to

hook up these reserves by building facilities out into the Gulf and to serve additional market requirements of their customers.

That docket is directly related to these dockets. Until that docket is heard, the customers cannot determine what the effect is going to be, we can't—we have no idea what the direct effect of these prices are going to be. We do know that the prices are higher than any prices being paid in the southwestern United States.

Presiding Examiner: And where does that lead you?

Mr. Ryan: It leads me into the Signal Oil decision, Mr. Examiner.

Presiding Examiner: No.

Where does that lead you here? Are you contending because of the price they should not be permitted to [214] get their gas?

Mr. Ryan: No, sir. I am contending they have not established their burden of proving that this price is justified.

Presiding Examiner: That is an entirely different proceeding.

The objection is sustained.

Mr. Ryan: Mr. Examiner, I don't want to transgress your Honor's ruling, I think that really goes to the very nub of our participation in this case.

Presiding Examiner: Very well.

Mr. Ryan: I would like to make an offer of proof.

I would like to have identified by reference to the Commission's files the West Delta contracts between

the C.A.T.C. group and Tennessee, which were a part of the proceeding in Docket Nos. G-9451, et al., their Exhibits 82-37, 82-38, 82-39, and 82-40.

Mr. Littman: I submit it is inappropriate for an intervener at this time to submit offers of proof or testimony. We are now engaged in the process of cross-examination.

Presiding Examiner: Objection sustained.

Mr. Ryan: Do I understand that the Examiner is denying my right to identify these contracts?

Presiding Examiner: Well, you have identified them. But this is not the proper place to entertain an offer of proof.

[215] Mr. Ryan: I asked that they be marked for identification, Mr. Examiner, as items by reference. That is my request.

Presiding Examiner: It is improper to interrupt the cross-examination of the witness at this time for that purpose.

Mr. Ryan: I will have to defer that.

May we have our recess, Mr. Examiner? I see it is 11:30.

Presiding Examiner: The hearing is recessed for ten minutes.

(Whereupon, at 11:25 a.m., a recess was taken to 11:35 a.m.)

[216] Presiding Examiner: The hearing will be in order. Counsel, do you want to complete your offer of proof?

Mr. Ryan: If I may be permitted to do so, yes, Your Honor. I ask to have identified these four

contracts by incorporation by reference to the Commission's files.

Presiding Examiner: Rule 1.28(b) provides that copies of such evidence may be marked for identification and made as an offer of proof. Do you have a copy of such contracts?

Mr. Ryan: Yes, I do. Actually, I don't think it is necessary to have identified all four copies of these contracts, because they are identical.

Presiding Examiner: Just a minute. I think this is a little out of order. I think we are getting ahead of ourselves. I suggested that we wouldn't interrupt the testimony of this witness at this time to take your evidence. We will take your evidence up later. We will mark it for identification at that time.

Mr. Ryan: My offer of proof is through this witness. I can't do it after he leaves the stand.

Presiding Examiner: How can that be? You asked to have them incorporated by reference.

Mr. Ryan: I would offer to prove through this witness that the contracts, except for the elements of price, take-or-pay-for provisions, and points of delivery, are in all material respects identical.

[217] Presiding Examiner: Now, then, what is the title of that document?

Mr. Ryan: The documents are entitled "Agreement Between Tennessee Gas Transmission Company", and the respective sellers of the gas who are involved here, Continental—

Presiding Examiner: Do you want to have all the documents marked?

Transcript of Hearing Held March 1, 1957 [Vol. II]
William W. Witmer—Recalled—Cross

Mr. Ryan: Maybe a preliminary question to this witness would prevent marking all four of them, just one would have to be marked.

Presiding Examiner: All right.

By Mr. Ryan:

Q. Mr. Witmer, are all four of the contracts entered into between Tennessee and the C.A.T.C. group in the West Delta area identical in all material respects?

Mr. Foster: Objection, Mr. Examiner.

Presiding Examiner: I will permit it.

The Witness: I don't recall. I don't think they are, though.

Mr. Ryan: Then I will ask to have marked for identification the four documents, Mr. Examiner.

The first one is an agreement between Tennessee Gas Transmission Company and Continental Oil Company, dated January 31, 1956, and it is Exhibit 82-37—

Presiding Examiner: I don't want that. Hand the document [218] to the reporter and the reporter will mark it Exhibit 3 for identification.

Mr. Ryan: I am asking that it be identified by reference to the Commission's files, Your Honor.

Presiding Examiner: You can't make an offer of proof under the Commission's rules by proceeding that way. You will have to give the reporter a copy of what is being excluded and have it marked for identification, and then that becomes your offer of proof.

(The document above referred to was marked Exhibit No. 3 for identification.)

Mr. Ryan: I ask that there next be marked for identification an agreement entered into on the 31st of January between Tennessee Gas Transmission Company and The Atlantic Refining Company.

Presiding Examiner: Exhibit 4 for identification.

(The document above referred to was marked Exhibit No. 4 for identification.)

Mr. Ryan: I ask that there next be marked for identification an agreement between Tennessee Gas Transmission Company and Tidewater Associated Oil Company, I believe the name of that company has been changed to Tidewater Oil Company, dated 31st day of January, 1956.

Presiding Examiner: Exhibit 5 for identification.

(The document above referred to was marked Exhibit No. 5 [219] for identification.)

Mr. Ryan: Finally I ask that there be marked for identification an agreement entered into between Tennessee Gas Transmission Company and Cities Service Production Company, dated the 31st of January, 1956.

Presiding Examiner: Exhibit 6 for identification.

(The document above referred to was marked Exhibit No. 6 for identification.)

Mr. Ryan: At this point, Mr. Examiner, I will ask the witness if he negotiated and executed these contracts on behalf of Tennessee Gas Transmission Company.

The Witness: Yes, sir.

Mr. Ryan: I offer these exhibits—

Presiding Examiner: Hold your offer until we get to the call on you for your evidence.

Mr. Ryan: Your Honor, I am proposing them through this witness.

Presiding Examiner: That doesn't make any difference. I will rule on them when your turn comes to offer.

Mr. Ryan: Your Honor has ruled on an objection which, it seems to me, goes to the very heart of one of the basic questions in this proceeding; that is, the question of price. And in order that I will not transgress Your Honor's ruling, I would like to see if I fully understand the ruling.

Is Your Honor ruling that the issue of price is in no wise [220] involved in this proceeding?

Presiding Examiner: I am not making any general rulings. I am ruling on specific objections.

Mr. Ryan: All right. I will just have to pursue this.

By Mr. Ryan:

Q. Mr. Witmer, what is the price provided in the West Delta contracts between the C.A.T.C. groups and Tennessee?

Presiding Examiner: That is covered by the previous objection and ruling. The witness need not answer.

Mr. Ryan: May I ask the Examiner if he will clarify the ruling for me so that I will not be forced to keep asking these questions? Could we have

it read from the record? I am just not clear as to what the ruling is.

Presiding Examiner: The reporter's tape is gone, Counsel. You proceed and I will hear another objection and then we will formulate the ruling that way.

By Mr. Ryan:

Q. Mr. Witmer, can you tell me what differences there are between the West Delta contracts between Tennessee and these C.A.T.C. producers, and the contracts which are involved in this proceeding?

Mr. Littman: I object to that, Mr. Examiner. I don't see any relevance to that question. Here is an area 200 miles away from what we are talking about here and what is involved here. If this is relevant, he has the right to go into practically [221] every contract in Texas, maybe Oaklahoma and everywhere else, and Louisiana.

Mr. Foster: As an additional point to which I would like to invite Your Honor's attention in this record: The matter which counsel seeks to inquire into is obviously beyond the scope of any direct examination. That is not the sole point I make, but the predicate for the principal point, which is this: Obviously counsel for the interveners are seeking to elicit on cross-examination outside the scope of direct a basis upon which to predicate their own affirmative case. In other words, a burden of proof rests upon the intervener in any effort it chooses to make to attack the sufficiency of the showing already made by the applicants when

the point sought to be made by intervener is not one encompassed by the scope of direct of the applicants and not one relating to any issue posed presently by the affirmative case made on direct by the applicants.

In other words, Mr. Examiner, it is apparent that counsel for the interveners seeks to get into questions either of one of two sources, one as to justness or reasonableness of the rates involved in this case, and the Commission has in its most recent ruling on this point, in an order issued January 31, 1957, in the Natural Gas Pipe Line Company of America, Docket No. G-4280, et al., and, Mr. Examiner, this is the same group of proceedings to which Mr. Littman referred, where the Commission [222] issued its Opinion No. 299.

I will read only just one part of the order to which I referred, denying applications for rehearing with respect to that opinion. It is as follows, appearing on page 5 of the Commission's mimeographed order:

"With respect to the contention that the producers' rates have not been shown to be just and reasonable, a requirement said to be imposed by Section 7(e) of the Act, suffices to comment without entering into any lengthly discussion of this question that, as we stated in our Opinion No. 288, and accompanying order, in the matters of Cities Service Gas Company, et al., Docket No. G-2569, et al., issued November 28, 1956, 'a proceeding of this nature can not and is not intended to take the

place of a proceeding under Sections 4 or 5 of the Act.'"

Now, the Commission was there quoting from the very case which I understand Mr. Ryan to refer to in his effort to inject into this proceeding a question which has no basis and no place. And exactly as Mr. Littman points out, there has been no showing made here by applicant with respect to the comparability of the size of the gas reserves involved, or that the sales to which he refers are in this area.

In fact, on the contrary, as Mr. Littman points out, the sales to which Mr. Ryan refers are many, many miles away, and it is obvious and clear that the issues which he seeks to raise have no relevancy and no place in this proceeding.

[223] He has a direct burden to prove any allegations that he wishes to make with respect to comparability. There is no predicate laid and it is outside the scope of the record.

Presiding Examiner: What is your answer to that, counsel?

Mr. Ryan: My answer is if you desire to rule as Mr. Foster has suggested, that this issue has no place in this proceeding, I would be willing to stand on that. If Your Honor does not rule on that, then I submit we have a perfect right to go into these questions.

Presiding Examiner: The objection stated by counsel for Atlantic and Cities Service is sustained.

Mr. Geneau: May Staff ask one thing in that connection, Mr. Examiner? At least it is the Staff's

understanding or present position that the West Delta gas is relevant to this proceeding only insofar as Section 3-J of the instant contract is involved, but with respect to its relevancy on the lawfulness or the reasonableness of rates of the price of gas to be paid in this proceeding, that it would not be relevant.

Presiding Examiner: That is correct.

Mr. Foster: Is that the position of the Staff, do I understand, Mr. Geneau?

Mr. Geneau: At the present time, yes, Mr. Foster.

Presiding Examiner: I am only going so far as to say that the ruling should be understood to apply to the lawfulness and the reasonableness of the rates as an issue here.

[224] Mr. Simons: You will recall that I requested also to be heard on this issue. These have been Mr. Ryan's questions. But I take it you said you were only ruling on specific objections.

Now, when my turn comes to cross-examination, I propose to get to the same issue. I assume there will be objections then and if you would rather take them as they come, that would be all right, too.

Presiding Examiner: I would rather do it that way.

Mr. Ryan: I didn't understand your last statement about justness and reasonableness of the prices, Mr. Examiner. I have not made any contention that these prices have to be proved to be just and reasonable. Our contention—that is, within the meaning of Sections 4 and 5 of the Act. Our

contention is that the applicants have the burden of proving that these are justified. Now what shape or form that evidence takes, I don't know.

Presiding Examiner: What is justified?

Mr. Ryan: That the prices are justified.

Presiding Examiner: That is what I understood.

Mr. Ryan: That the prices have been justified, not within the meaning of Sections 4 or 5, the prices here are higher than any other prices being paid in the southwest part of the country.

Presiding Examiner: The Examiner understood that counsel's objection went to that, and the ruling was on that basis.

[225] By Mr. Ryan:

Q. What is the size of the West Delta reserves, Mr. Witmer, dedicated to Tennessee? A. I don't recall exactly, Mr. Ryan.

Q. I refer to you Section 1-C of Exhibit 3, for identification. A. You have referred me. Now what do you want? This is not the size of the reserves, if that is what you mean.

Q. The dedicated reserves was my question, dedicated reserves to Tennessee. A. The dedicated reserves to Tennessee that were proven, I mean that are proven and recoverable are not the figure as shown in subsection "C" of Section 1 of this contract, whatever this contract is.

I don't recall. I do know they are considerably smaller than the dedicated reserves involved in this consolidated proceedings and, of course, all that is a matter of record in our case where we put those in.

Transcript of Hearing Held March 1, 1957 [Vol. II]
William W. Witmer—Recalled—Cross

Q. You said whatever this contract is. Is that a contract between Tennessee and Continental Oil Company, dated January 31, 1956? A. Yes.

Q. Did you sign that contract for Tennessee? A. Yes.

Q. Do I understand, Mr. Witmer, that Tennessee has con- [226] structed the facilities for the West Delta contract?

Mr. Woodfin: Mr. Examiner, might I object to this line of questioning unless Mr. Ryan wants to state that it goes to the question which was involved in the supplying of certain quantities of gas per day from the off-shore area.

Despite the Examiner's ruling, Mr. Ryan seem to be going right down the same path that he has intended to follow here. This is not a certificate proceeding involving West Delta. This is a certificate proceeding involving West Cameron, East Cameron and Vermilion areas, some two hundred miles to the west of West Delta. We have taken an interminable period of time this morning on that.

Presiding Examiner: What is your answer to that, counsel?

Mr. Ryan: Mr. Examiner, my answer to that is that all matters with respect to the West Delta contracts are relevant to this proceeding. I would prove that they are comparable and that—

Presiding Examiner: For what purpose?

Mr. Ryan: For the purpose of showing the similarities and differences in the contracts, with questions justifying the price and every other element of the public convenience and necessity. These applicants here have proved nothing, they put on

one witness yesterday who didn't know anything about these contracts.

Presiding Examiner: The objection is sustained.

[227] By Mr. Ryan:

Q. Mr. Witmer, I believe you testified yesterday as to the average cost of gas to Tennessee in the event these reserves are attached, and in the event that they are not attached; is that not correct? A. Yes, sir, I did.

Q. I would like to explore the manner in which you determined that. Did you yourself make a deliverability study of reserves to determine what the price would be? A. No, sir.

Q. Did somebody in your company do it? A. Yes, sir.

Q. How many deliverability studies were made? A. I don't know.

Q. You are then testifying to a figure which somebody else supplied to you? You don't know the basis for that figure; is that correct? A. I didn't say that, Mr. Ryan.

Q. Do you know the basis for that figure? A. Yes, sir.

Q. Would you explain to me, in determining the average price of Tennessee gas in the year 1958, what volumes of gas you determined would not be taken if the C.A.T.C. reserves were taken, and from where those volumes would not be taken? A. May I have the question read back?

[228] Presiding Examiner: Yes.

(Question read.)

Mr. Littman: I object to that, Mr. Examiner That is wholly unintelligible, as far as I am concerned.

Presiding Examiner: The objection is overruled.

The Witness: Mr. Ryan, the buying pattern that the deliverability study showed—

Transcript of Hearing Held March 1, 1957 [Vol. II]
William W. Witmer—Recalled—Cross

By Mr. Ryan:

Q. What deliverability study are you referring to? A. The same one you referred to.

Presiding Examiner: Let's not get into a controversy.

The Witness: There is only one.

Presiding Examiner: All right. Answer the question.

The Witness: I used one deliverability study—

Presiding Examiner: You started off by stating the buying pattern determined by the deliverability study. Did what?

The Witness: Including the taking of gas from the applicants in these proceedings under these contracts that are the subject of these proceedings, and I am a little confused as to your question, but there was no curtailments of deliveries elsewhere due to the taking of the gas that is the subject of this proceeding in that deliverability study.

By Mr. Ryan:

Q. In other words, you just added these—in determining what the average cost would be without these reserves, without [229] these C.A.T.C. reserves, you just subtracted the daily volume shown on the deliverability study to come up with a figure? A. I don't know whether I can answer that yes or no, or not. The deliverability study, as appears in our exhibits in Docket G-11107, is the deliverability study that I used.

Now, it includes takes from the gas reserves which are the subject of this proceeding. Now, I am confused,

frankly, Mr. Ryan, as to what gas you are referring to that I may have subtracted. I don't understand that part of your question.

Q. Well, you made two assumptions, did you not; one, that you would take the C.A.T.C. gas; two, that you would not take the C.A.T.C. gas? A. That is correct.

Q. Based on those two assumptions, you came up with two different costs of gas to Tennessee, on an average basis? A. Yes, sir.

Q. Now, I want to know: In determining what the average cost would be if you did not take the C.A.T.C. gas, how you determined that; on what figures did you determine that? A. On the figures in that deliverability study.

Q. Did you merely subtract the volumes which— A. Wait—

Q. Let me finish. Did you merely subtract the volumes which are shown on that deliverability study as being taken from these C.A.T.C. reserves? [230] A. Yes, sir.

Q. You did not substitute any other gas in place of that? A. No, sir.

Q. In other words, you assumed that your market requirements would go down? A. I didn't assume anything. That is the way I did it.

Q. In connection with determining your average cost of gas, Mr. Witmer, did you do any study as to the effect upon the customers of the construction of the $16 million worth of gathering facilities that you testified to? A. That is out of my province, Mr. Ryan. I did not.

Mr. Littman: I didn't get the answer. May I have it read, please?

Presiding Examiner: Yes.
(Answer read.)

By Mr. Ryan:

Q. And in determining the cost of facilities which you testified to, am I correct in assuming that you included cost of facilities in the Gulf leading to the nine platforms which are presently constructed by the applicants? A. Yes, sir.

Q. You did not take into consideration the other two platforms which testimony has shown will probably be built, or may be built? [231] A. No, sir, they are not productive yet, nor are they even built.

Q. Mr. Russell asked you some questions about Section 3-J of the contracts of these proceedings. I would like to get it clear: Am I correct in assuming that if gas is delivered from these reserves in lieu of gas from the West Delta area, that the price to be charged for that gas will be the price charged under these contracts?

Mr. Littman: Just a minute, I object to that, Mr. Examiner. The witness has made it very clear that there is no gas being delivered in lieu of the Delta gas. He said it would be in addition to the Delta gas.

Mr. Ryan: That is completely contrary to the evidence, Mr. Examiner.

Presiding Examiner: The witness may take the question.

The Witness: I would like to answer your question this way, Mr. Ryan: All of the gas dedicated to Tennessee under these contracts will eventually be delivered under these contracts and all of the

gas dedicated to Tennessee under the West Delta contracts will eventually be delivered under the West Delta contracts, and the prices paid for the gas delivered in each area will be that provided in each of the contracts.

Mr. Ryan: May I have the last addition to that answer read, please?

Presiding Examiner: Yes.

[232] (Answer read.)

Mr. Ryan: I am still not completely clear.

Mr. Woodfin: Mr. Examiner—

Presiding Examiner: Just a minute.

Mr. Ryan: Let me finish my question, Mr. Woodfin.

Presiding Examiner: Just a minute. Go ahead.

By Mr. Ryan:

Q. All of the gas delivered from acreage provided in the contracts which are the subject of these proceedings will be paid for at the price provided in these contracts; is that correct? A. Yes, sir; you mean the contracts that are the subject of these proceedings?

Q. That is right. A. Yes, sir, that is correct.

Q. And that is regardless of whether they are delivered under the original dedication provisions or additional dedication provisions or the provision under Section 3-J, with respect to the substitution of West Delta gas? A. Well, now, I don't know what you mean by additional dedication, and that sort of thing. Sir?

Q. Had you finished your answer? A. No, sir. I thought you had said something else.

The gas delivered under this contract, though, Mr. Ryan,

under the provisions of Subsection J of Section 3, will be paid [233] for by Tennessee according to the price schedule in this contract. Now, the gas which is not delivered at that time from the West Delta area, which is covered by the contracts between Tennessee and these applicants in that area, but which will be delivered later or during the term of the West Delta contracts, will be paid for by Tennessee at the rate provided in the West Delta contracts.

I can't make it any more clear, I don't believe.

Mr. Ryan: Mr. Examiner, I am completed with my cross-examination of this witness. I would at this time like to offer Exhibits 3, 4, 5 and 6 in evidence.

Presiding Examiner: We are still on cross-examination. Just hold your offer for a little bit, counsel.

Mr. Ryan: Will the Examiner please advise me at the appropriate time when I may offer these in evidence?

Presiding Examiner: When I call for evidence of the other parties, and you will be included. Public Service Electric and Gas Company.

By Mr. Kirby:

Q. Mr. Witmer, with respect to the gas that will be taken from the C.A.T.C. fields in lieu of the West Delta field, will there be a balancing of the gas at a later date so that the dollars come out the same? Is it a wash transaction, in other words? A. Yes, sir.

[234] Q. Now, you mentioned yesterday that there were five other companies in the area who were bidding

for this same gas. Now, was Tennessee the highest bidder? A. I don't know what the others bid, Mr. Kirby.

Q. Could you tell us what considerations you had to give in order to be the successful bidder, other than price, if there are any? A. Well, that is pretty complicated, but they are all embodied in the contract here. You see, it is not only price that is considered in these negotiations, but the terms of delivery and all the things that are involved. To list all of the considerations that passed from Tennessee to the producers, I just would have to go through every word of the contract, I suppose.

Q. No, I didn't mean that. A. You mean exceptional?

Q. Yes, the major considerations, such as, I suppose—let me give you an example on this: The platforms you had to construct; was that a major consideration in the bid? A. The platforms we construct? We have constructed no platforms, Mr. Kirby.

Q. Pardon me—to construct each of the platforms. A. Yes, sir, I would say that is a consideration, except I might explain there, Mr. Kirby, that out in the Gulf of Mexico I think it is probably the only practical way to make [235] the delivery arrangements, due to the fact that if the producer did not run through his separators, dehydrators, and so forth, and meters, on each of his platforms, I don't know how you would set the delivery up. I mean, it would be a little inconvenient to have the producers' lines tie into our lines 50 feet below the surface of the water somewhere.

I think, although it was a consideration, it is also the most practical means of delivering the gas to Tennessee.

Q. I thought initially the producers intended to build the gathering lines into the shore? Wasn't that the

initial arrangements? A. Between Tennessee and the producers?

Q. Yes, in your initial negotiations. A. No, sir, I don't recall anything like that.

Q. Then from the start of the negotiations you always intended to build the gathering lines out to the platforms? A. Yes, sir.

Q. And you don't know whether the other companies had any such conditions in their bid? A. I am not sure, but I imagine they felt very much as Tennessee, that after all, these are not the only producers in the off-shore play. Normally the company in the best position to buy additional reserves is the one who is located closest to them.

Now, you can't depend on these producers to build to you [236] all the time. So it is also, in a way, a pretty good idea to get where the gas is being discovered, you see.

Q. But you said yesterday, at the time that these negotiations were going on, they were the only producers who had a sizable package of reserves? A. For sale.

Q. For sale? A. Yes.

Q. So that there was no competition among suppliers at that time to sell the gas, to either you or to the other companies? A. You mean to sell gas in that same area?

Q. Yes, from the same area. A. No, sir, there sure wasn't. The competition was all between the buyers.

Q. Is Tennessee paying—withdraw that question, please.

In Docket G-8805, Tennessee received authorization to buy, and did buy, some 17-cent gas, and now they have filed a rate increase in which they are asking to increase their rates about $1 million to cover that gas. Now, with that in mind, may I ask you if you have made enough

investigations to determine whether or not the purchase of this gas will cause Tennessee to file another rate increase, in addition?

Mr. Littman: Mr. Examiner, I certainly want to express my disagreement with the premise of this question. I know of [237] no increase that has been filed as a result of the matters suggested by counsel. Other than that, I would have no objection to the witness answering the question.

Presiding Examiner: Very well. You may answer.

The Witness: May I have the question read back?

Presiding Examiner: Yes.

(Question read.)

Mr. Kirby: May I clarify it just one bit further. The docket I am referring to, wherein I stated they included that gas in the rate increase, is G-11980.

The Witness: I would say, Mr. Kirby, that that is really out of my province, but I would say that the initial price in this contract, by itself, would not cause Tennessee to file for a rate increase.

By Mr. Kirby:

Q. I think you have answered the question. But to make it more specific: Have you made any investigation which would allow you to come to that conclusion?

Mr. Littman: Just a minute. I object. First he gets his answer and then he tries to impeach him. I object to the question, I don't understand it.

Mr. Kirby: What I am trying to get is per-

fectly obvious, whether or not he made a study. He indicated in his answer he didn't make a sufficient one, but I wanted to clarify it.

Mr. Littman: He should have asked that question first [238] before he asked the $64,000 one.

Presiding Examiner: You may answer the question.

The Witness: I have made no detailed study of it. Incidentally, nor am I the person who decides whether Tennessee files a rate increase or not.

Presiding Examiner: I think there was some merit to that objection, counsel.

Mr. Kirby: Your Honor, if you will just have—

Presiding Examiner: I am not holding you to it, but I think you would have saved time if you would have asked first if he had made a study and he said no, and you would not have asked the other one. This way you asked two.

Mr. Kirby: May I have my questions read? I think it is perfectly clear that I did ask just that.

Presiding Examiner: No. I am just trying to save time.

Mr. Kirby: Well, we can look at the record.

Presiding Examiner: All right.

By Mr. Kirby:

Q. Is Tennessee Gas paying 21.4 cents to any other producers under any contract? A. At the present time?

Q. Yes. A. No, sir.

Q. Do you know of any contracts that have been certificated for the sale of gas in the Louisiana area and the Gulf [239] Coast area wherein the price is 21.4 cents? A. No, sir.

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Mr. Kirby: That is all. I have no further questions.

Presiding Examiner: New York Public Service Commission.

Mr. Simons: Before I commence my cross-examination, I would like to request from this witness his working papers, which underly his computation as to the effect on Tennessee Gas Transmission overall cost of gas, 1957 and 1958, of the volumes involved here.

Mr. Littman: We will take that request under advisement.

Mr. Simons: Then I can't cross-examine on it until I get it.

Presiding Examiner: I don't understand why you can't. I think you have to establish that you can not, first.

Mr. Simons: All right. Then I will go further. I would like specifically to request—

Mr. Woodfin: Mr. Examiner, I would like to make an objection on the record. I have seen this happen in hearings here many times, and it usually leads to interminable delays. But I would like for counsel to point to some rule or some case that, as a matter of right, entitles him to working papers.

Presiding Examiner: We don't have to get into that.

Mr. Woodfin: He is entitled to cross-examination of this witness, but not to delay this hearing on his demand that he be presented with some working papers.

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[240] Presiding Examiner: Very well. Proceed, counsel.

Mr. Simons: I would like to go one step further. I would like to request the Examiner to direct the witness to produce those working papers.

Presiding Examiner: The request is denied.

By Mr. Simons:

Q. Mr. Witmer, would you tell me how you arrived at the answer of 12.54 cents that you gave in response to a question by your counsel as being the cost of gas in 1957, excluding these purchases? A. Yes, sir. I was furnished the figure which represented Tennessee's average cost of gas without the C.A.T.C. gas included. That figure was derived from all the prices Tennessee pays for gas—.

Q. Just a moment. You were furnished that figure, did you say? A. Will you let me finish?

Presiding Examiner: Yes, proceed.

Mr. Simons: I want to know just what you said.

Presiding Examiner: Let the witness finish his answer.

Mr. Simons: I don't know what he is testifying from, from his own study.

Presiding Examiner: Let him finish and then you can ask.

The Witness: That figure was derived from all the total [241] costs of gas to Tennessee which I furnished to the person who added them up and divided them to obtain the average cost of gas figure. He and I, together, both then sat down and added in the quantities of gas from these applicants

and weighted the average and came up with the figures which I gave in direct testimony yesterday.

By Mr. Simons:

Q. Who is the person that you referred to? A. A Mr. McGee.

Q. What is his office? A. He is in our—I believe they call it Budget Section.

Q. What is he, an accountant? A. By profession, I think so.

Q. All right. Now, you gave him some figures; is that what you said? A. I furnish those people, Mr. Simons, with all of the individual costs of gas under every contract Tennessee has.

Q. What figures did you give him? Did you give him a sheet of paper? A. Yes. And then I check them from time to time on the sheets of paper that they work from.

Q. What does the sheet of paper show? A. What does it show? I don't have it.

Q. You don't have it? [242] A. I gave it to them.

Q. Do you know what volume—

Mr. Littman: Pardon me. May the witness finish his answer?

Presiding Examiner: Yes.

The Witness: It shows all of the prices that Tennessee pays in its various pricing areas and the volumes of gas that Tennessee expects to buy which are in turn taken from the deliverability study, which is done by someone else, the information for that which is also obtained from me.

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By Mr. Simons:

Q. You speak of pricing areas. What is a pricing area? A. Well, Mr. Simons, in our contracts in Texas we have various pricing areas. In other words, in our contracts they are defined by Railroad Commission districts; that is, areas that are set out and prescribed by the Railroad Commission of Texas, which is the administrative body in Texas which rules on the oil and gas conservation problems. Our contracts provide, then, that the clauses operating in those contracts will be effective only within the specified Railroad Commission district.

In Louisiana, rather than having districts—rather than using districts set out by some administrative body, our contracts in Louisiana are based on areas comprised of certain parishes enumerated in the contracts.

Q. How many pricing areas do you have in Louisiana? [243] A. Three.

Q. What are they? A. The Southwestern Louisiana pricing area is composed of some seven parishes, which I can't relate without looking at a map of the State. The Southeastern Louisiana pricing area is composed of either four or five parishes, and there is another pricing area in the Northwestern part of the State of Louisiana which is composed of several parishes.

Q. What is the price that you pay in your southwest Louisiana pricing area at the present time? A. As I testified before this morning, slightly in excess of ten cents at 15.025 p.s.i.a.

Q. And in southeast Louisiana? A. Seventeen cents at 15.025.

Q. And in northwest Louisiana? A. Twelve and a half

cents at 14.65. These may be approximate because of some tax adjustments, but that is about right.

Q. I was going to ask: did those include the one-cent Louisiana gathering tax? A. The ten-cent one does, the 17-cent does not, the 12½-cent one does not.

Q. So that to be comparable, they would be ten cents, 18 cents and 12½ cents, that is the price that Tennessee actually pays? A. No, that is not correct, because in some contracts we [244] don't refund the gathering tax.

Q. Could you explain to me, then, what the price is that Tennessee actually has to pay for the gas? A. Where?

Q. Well, let's take the southeast Louisiana where you said it is 17 cents. A. All right, sir. In that particular area it is 17 cents plus the one-cent gathering tax on 15.025 pressure base.

Q. And in the northwest Louisiana area, where you said it was 12.5 cents? A. Well, that actually is tied to an area in Texas, and that is where the 12½ cents comes from, and is the reason for the difference in pressure base, and as I recall at the moment, we don't refund the gathering tax for that particular gas. So it does not include it, nor does it—nor should it have added to it one cent.

Q. Now, in arriving at your 12.54 figure, could you tell me the volume of gas in Mcf and the dollars? A. No, sir, I don't have that here. All I have is the result.

Q. In arriving at the 12.71 cents figure, did you take whatever volume you had, whatever dollar figure you had, add in 175,000 a day for two months at what—what price? 22.4? A. Yes.

Q. And then divide? [245] A. Yes, sir.

Q. Now, how did you arrive at your 1958 figures? A. In the same manner, with the exception of the volume.

Q. Can you give me the volume and dollar figures? A. I don't have the dollar figures. The daily volume would be approximately 209 million a day on a pressure base of 14.73.

Q. You are speaking now of—the 209 million cubic feet is the additional volume that is coming from the C.A.T.C. contracts? A. Yes, sir.

Q. But you don't have the overall volume, for example, with relation to the 14.73 figure? A. No.

Q. Or the dollar figure? A. No.

Q. But whatever that was, you added approximately 209 million a day, plus the related 22.4 cents price, and that gave you your 13.7 cents; is that correct? A. It is not 22.4 at that pressure base, but at any rate converted to the correct pressure base.

Q. That is 209 million at what pressure base? A. 14.73.

Q. What is that at 15.025? A. Do you want me to work it out for you?

[246] Presiding Examiner: No, not on the stand.

The Witness: I don't know.

By Mr. Simons:

Q. On Page 51 of your testimony, if you will refer to that, please, you state, in response to a question by Mr. Littman that for the year 1958, the weighted average cost of gas for Tennessee, including the gas covered by these contracts, at approximately 240 million cubic feet per day on a pressure base of 14.73 p.s.i.a., is approximately 13.70 cents per Mcf.

Could you reconcile your statement as to the 209 million you just gave me and 240 million which appears on

page 51 of the transcript? A. Yes, I can. The 240 million is correct, the 209 million would be the minimum based on the reserves that are proven now, but on the deliverability study we intended to take 240 million a day during that year.

Q. Well, in arriving at your 13.7 figure, which did you use? A. The 240 million, that is the correct figure. It is the figure I should have given you a minute ago. I gave you, instead, the minimum figure under the contract.

Q. Coming back to quantity, again, Section 3 of the contract speaks of 175,000 Mcf a day from November 1, 1957, until November 1, 1958; is that not correct? A. Yes, sir.

[247] Q. What is the actual proposal, to take 175,000 in the last two months of this year, and then 240,000 beginning January 1, 1958? A. To the best of my recollection, that is what it is. I don't have the deliverability study in front of me, Mr. Simons. I am testifying strictly from memory.

Q. I wonder, sir, if you would turn to page 116 of the transcript. A. 116?

Q. Yes, sir.

I should like to direct your attention to the sentence which begins, following the colon on line 11 of that page, and runs through to line 15. I won't bother to read it in again, but my difficulty is with the meaning of the last line of that.

Is there some typographical error there? A. It is a little confusing to me, too. I don't know whether it is typographical or not.

Q. Well, this is a letter which you sent, from a letter

which you sent, is it not? A. Yes, it is from a letter that I sent.

Q. Could you check with the original letter and see if that is what it says? A. I don't have the original with me. But I might have a copy that might show it.

Q. A copy, all right. [248] A. There is something left out in the transcript, Mr. Simons. Shall I read the sentence as it appears in the original letter?

Q. Yes, if you would, please. A. "As long as the lands located in the disputed area, which are covered by leases dedicated to the contract, are considered to be Federal domain, the one cent (one cent) referred to above, insofar as such lands are concerned, should be paid by buyer to seller—".

Q. Just a moment, would you take that more slowly? A. I am sorry.

Q. Shall be paid. A. "shall be paid by buyer to seller under the contract as a payment equivalent to or equal to the last gas gathering tax."

Q. I think that that makes more sense. I would like to explore that just a bit, if I might.

Presiding Examiner: Could you put that off until after the luncheon recess?

Mr. Simons: Yes.

Presiding Examiner: The hearing is recessed to reconvene in this room at 2 p.m.

(Whereupon, at 12.32 p.m., a recess was taken to 2:00 p.m.)

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[249] 2:00 p.m.

AFTERNOON SESSION

Presiding Examiner: The hearing will be in order.

Whereupon, WILLIAM W. WITMER resumed the stand as a witness and, having been previously duly sworn, was examined and testified further as follows:

Cross-examination (cont'd) by Mr. Simon:

Q. As I recall, Mr. Witmer, just before the noon recess we were on the middle of page 116 of the transcript of yesterday's hearing. You had indicated a correction on that.

Now, as that statement is corrected, as I understand it, if the lands located in the disputed area which are covered by the leases are considered to be federal domain, the one cent shall be paid by Tennessee to C.A.T.C. under the contract as a payment equivalent to the Louisiana Gas gathering tax.

Now, what happens to it when C.A.T.C. gets it? Do they pay the one-cent tax? I do not understand what is meant by "equivalent to". A. Mr. Simons, it is my understanding, and I have been shown the provisions that refer to it, that the Federal Government, in effect, has done this: they have told these producers that if the leases are determined to be federal, they will have to pay the Federal Government the one-cent [250] equivalent to the Louisiana gas gathering tax. And if they turn out to be Louisiana State lands, then of course they are liable to Louisiana for the one-cent as a gathering tax.

So, I think the producers find themselves in this position, that no matter which the leases turn out to belong to, they are liable for this one-cent payment, and to the best of my recollection the Federal Government has expressed it as being based on the Louisiana gas gathering tax.

I believe that is the term they used.

Q. In either instance, then, whether these lands are federal or state, Tennessee will be paying 22.4 cents for the gas and C.A.T.C. will be receiving 22.4, of which they will turn one cent over either to the state or to the Federal Government; is that correct? A. Yes, sir, that is correct.

Q. With reference to these various letters which relate to the contract, could you explain to me why they are not part of the contract itself but why they are embodied in separate letters? A. Well, is my own estimation they are not part of the contract because they didn't affect any of the provisions of the contract. They were based on something outside the limits of the contract. For instance, the letter to which we just referred is purely an interpretation of something that is in the contract. One of the other letters, which is [251] from Tennessee addressed—well, I think there was a letter addressed to each of them, they are all exactly the same—dated the 14th day of August, 1956, which is another interpretation of the term "liquefiable hydrocarbon."

The one dated August 20th, 1956, which involves the pipe and so forth, was of course outside the limits of the contract, because it was an agreement concerning the furnishing of pipe and that sort of thing.

I just don't think any of them had to do with the actual terms of the purchase and sale; that is why they weren't included in there.

Q. You are the officer of Tennessee, Mr. Witmer, who is responsible for the purchase of gas, is that correct? A. Yes, sir.

Q. And in the course of your duties, do you keep advised of the prices which not only Tennessee is paying but which all other pipelines are paying, is that correct, in the areas in which you buy? A. Well, to the best of my ability.

Q. You would also keep yourself advised of Federal Power Commission action on such contracts, your contracts and other people's contracts? A. Yes.

Q. I believe you stated that you commenced negotiations that led up to the execution of these contracts in [252] October of 1955, the negotiations continued until August of 1956, is that correct? A. Yes, sir. Those negotiations included negotiations for gas in addition to this gas, also.

I mean, we were talking about several deals all at the same time.

But that was the first time that the gas that is the subject of the contracts in these proceedings was brought up.

Q. Now, the price you finally arrived at, the initial price, is the highest initial price in any Tennessee Gas Transmission purchase contract, is it not? A. At the present time, yes.

Q. And the particular step escalation provision is the steepest in any of Tennessee's present gas purchase contracts, is it not? A. Yes.

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Q. Do you know of any price being paid by any other interstate pipe line at an initial price higher than 21.4 cents in the southwest? A. I have heard of one but I am not sure whether it is in existence or not. I know quite a few of them at 20 cents and over, but they are for much smaller amounts of gas than covered by these contracts.

Q. But you don't know of any as high as 21.4 or higher. [253] A. I will put it this way: I haven't seen any contracts.

Q. Do you know of any step escalation provision in any contract between an interstate pipe line and a producer in the southwest which contains a step escalation as steep or steeper than the one contained in the contracts involved here? A. Yes, sir.

Q. What contract is that? A. I am not positive that my reference to which contract it is is correct, but I believe American-Louisiana has some contracts that go up, I think it is 4 mills a year—speaking from memory, now—and I know there are some that go up 2 mills a year.

Q. Your contract provides for an increase of 2 cents every four years, does it not? A. That is right.

Q. Which would work out to 5 mills a year. A. That is right.

Q. So that would be higher even— A. But under the ones that change each year, they get their money sooner.

Q. But less of it? A. Well, less in the total, perhaps. I don't know when you present-worth it back it would be more or not; I [254] haven't made that calculation. It would be pretty close.

Q. Aside from the timing aspect—and what I mean by that, whether you get it each year or whether you get

it at four-or five-year intervals—do you know of any step escalation provisions which would work out to as much as 5 mills a year? A. No.

Q. Could you tell me what the highest price presently being paid by Tennessee is for any gas in the southwest, other than the C.A.T.C. contract involved here? A. Seventeen cents plus the one-cent gathering tax at 15.025.

Q. At the time that you were negotiating, were you aware of this Commission's Signal Oil decision? A. I don't recall whether I was or not.

Q. Have you heard of it as of right now? A. I have heard of it, yes.

Q. You don't recall whether you were familiar with it at the time you were negotiating? A. That is right, I don't remember chronologically when I heard about the Signal decision, but it wouldn't have bothered me particularly, I suppose, even if I did remember it at that time, because this situation is too different from that.

Q. Did you seek the advice of company counsel as [255] to the applicability of the Signal Oil decision to the price you were proposing to pay in C.A.T.C.?

Mr. Littman: I object to that, Mr. Examiner. I don't think that is a material line of inquiry, as to how much law this witness might have studied before he closed this contract.

[256] Presiding Examiner: He may answer.

The Witness: I don't think I asked any company counsel, as you put it, about the applicability of the Signal case to this situation, since in this situation we went into a completely new area where no gas was being sold.

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By Mr. Simons:

Q. Then was it your opinion that Signal was not applicable? A. As I said, I don't remember right now whether at that time I knew what the Signal decision said or not, but if I had, it would have been my opinion that it wouldn't have been applicable in this case.

Q. But you don't recall actively thinking about it one way or the other?

Presiding Examiner: I think you are going too far in that question, counsel.

By Mr. Simons:

Q. We discussed this morning the pricing areas of Tennessee in southwest and southeast Louisiana. Could you give me the approximate volumes of gas presently being purchased in those two areas? A. No, sir, I wouldn't want to guess at that, and I would have to guess at it.

Q. Whatever those volumes were, they would have had to have been included in the computations which you gave on direct; [257] is that not correct—with reference to the '57 and '58 prices? A. Yes, that is correct.

Q. Now going back to the statement you gave on direct that the contracts in southwest and southeast Louisiana would not be triggered by the instant contract, did you obtain the opinion of company counsel on that? A. That is my own opinion.

Q. But in the event that there should be triggering, I take it that you are not waiving any right to have that included in Tennessee's cost of service in a rate case? A. I don't decide what goes into Tennessee's cost of service in a rate case. But as far as the gas purchase contracts are concerned, I am the company counsel.

Mr. Woodfin: May I have the last part of that answer read back, please?

Presiding Examiner: Yes.

(Answer read.)

By Mr. Simons:

Q. In your direct examination you stated that one of the advantages of this acquisition was that the reserves were well-located with reference to the Tennessee Gas Transmission system. Now, as I understand your testimony here, it is necessary for Tennessee to expend some $16 million to bring the gas involved here to dry land, and as I understand the application in 11107, Tennessee is proposing to spend some $85 million to construct a [258] pipeline, large diameter pipeline, from southeast Louisiana to Portland, Tennessee, to bring this gas, along with some other gas, perhaps, to its main line. Do you consider that that indicates that this gas is well-located with reference to the Tennessee system?

Mr. Littman: Mr. Examiner, I want to interpose an objection to that question, as counsel is clearly way off on his facts. The predicate for the question has no basis at all in fact, either in this record or in any other record. That is the basis for my objection.

I don't mind if he would ask this witness whether, in the light of the pending application in Docket G-11107, and in the light of what he has heretofore testified to, he would consider that to be well-located. That would be all right. But to go ahead and recite a lot of alleged facts that are way off base and erroneous, I don't want to just sit here and let a question like that go by.

Presiding Examiner: Let me have the question, please.

(Question read.)

Presiding Examiner: Objection sustained.

Mr. Simons: In view of that, I would like to inquire of counsel for Tennessee, who seems to have such a desire to help me frame my questions, just precisely where I was in error, since he alleged there was an error of fact in my question.

Presiding Examiner: You don't have to advise him. The [259] ruling was based on the $85 million factor, which was included in there without any qualification whatever.

Mr. Simons: All right, thank you very much, Mr. Examiner.

Presiding Examiner: Yes.

By Mr. Simons:

Q. Are you familiar with the application in G-11107, Mr. Witmer? A. Yes.

Q. Are you familiar with the fact that in that proceeding Tennessee proposes to build a large diameter pipeline from southeastern Louisiana to Portland, Tennessee?

Presiding Examiner: I don't see that bringing that in, as you are doing it, has any relevancy whatever.

Mr. Simons: Mr. Examiner, this witness—

Presiding Examiner: If they got gas, if the gas was available anywhere, in Texas, Louisiana or even Mississippi, some of that 85 million would still be necessary. But you are including the whole 85.

Mr. Simons: This witness says it is well-located with reference to the Tennessee system.

Presiding Examiner: All right. You can cross-examine him on that.

By Mr. Simons:

Q. When you said the Tennessee system, were you including the pipeline which has not been built and not been certificated [260] in G-11107? A. I am including the Tennessee system.

Q. Is that in the Tennessee system? A. Not yet.

Presiding Examiner: What do you mean by "system"?

The Witness: I mean the Tennessee facilities as they exist now, Mr. Examiner. In other words, when I said that, I mean it is better located there than it would be in Texas, where it would have to be hauled farther, or in the southeastern part of Louisiana, where it would have to be hauled farther also.

Incidentally, you are in error in the figures you quoted. The $16 million puts this gas to Tennessee's main line, not to the shore line. I don't know what proportion of the 85 million would be attributable to this gas or some other gas. There is other gas in that docket.

By Mr. Simons:

Q. What facilities do you have at Kinder, Louisiana? A. I don't know what all facilities we have there. We have a large compressor there, and part of the main line comes through there. Several other lines from Louisiana and Texas focus into that point.

Q. And is that the system you meant that it is located close to? A. That is where most of our gas starts out of the pro- [261] ducing States and going to the north, or at least a large portion of it, I would say probably yes, that is probably the system I had reference to.

Presiding Examiner: Is the what?

The Witness: Is the part of the system I had reference to.

By Mr. Simons:

Q. Do you know what the purpose of the 30-inch line from southeastern Louisiana to Portland, Tennessee, which is proposed in 11107, is?

Mr. Woodfin: Mr. Examiner, might I interpose this objection: There are some of us here that are concerned solely with these gas contracts. Mr. Simons, on behalf of the New York Commission, I am sure, is concerned with the whole Tennessee system. I would suggest that he save those questions for 11107, and not clutter this record with this information and these questions, which I can not, for the life of me, see the materiality of, what would be in this docket to the end of the line from southeastern Louisiana to Kinder, Louisiana, 30-inch line, which doesn't even cover the area proposed here.

Mr. Littman: I join in that objection. Counsel simply got up ahead of me.

Mr. Simons: Maybe I can shorten this. Are counsel for the applicants willing to have the certificate that is issued in this proceeding conditioned upon the issuance of the certificate in 11107?

[262] Mr. Woodfin: The answer to that is no. The answer to that is we have applied for an independent producers certificate to sell gas under these contracts. Now, we can't try 11107 here.

Mr. Simons: I was not asking you to, Mr. Woodfin.

Presiding Examiner: Let's go on.

Mr. Simons: Then in response to either the statement or objection, or whatever it was, it would seem to me that the issuance of a certificate here will seriously prejudice whatever position we would have in 11107, which is going to relate to the cost of gas as it winds up in the Tennessee system north of Portland, Tennessee.

Presiding Examiner: Let's get on, counsel.

Mr. Simons: I believe I have a question pending.

Presiding Examiner: Read the question.

(Question read.)

Presiding Examiner: Answer the question.

The Witness: The purpose is to haul gas from Louisiana to Portland, Tennessee. I couldn't give you a flow diagram showing which gas would go into that, or anything like that, Mr. Simons, I don't know that.

By Mr. Simons:

Q. As a general matter and as a matter of your general familiarity with the application, isn't it a fact that a large proportion of the gas which will go through that line is the [263] gas that is involved in this proceeding? A. Yes.

Presiding Examiner: Or any other gas that you get in Louisiana or Texas, in place of it?

The Witness: Well, sir, I don't know which gas is going through which line when it leaves Louisiana.

Presiding Examiner: If you didn't get this gas from off-shore Louisiana, where would you get it; you would get it from some point south of Kinder, wouldn't you?

The Witness: Yes.

Presiding Examiner: You still would have to have a proportionate sized line for the proportion of gas that you would get from it, wouldn't you?

The Witness: Yes.

Presiding Examiner: We are just wasting time.

The Witness: Some gas would go through it, I don't know which gas it would be.

Mr. Simons: I don't feel we are wasting time, Mr. Examiner.

Presiding Examiner: I am sure of it.

By Mr. Simons:

Q. Have you made any effort to compute the cost of gas to Tennessee on dry land? A. I don't understand your question, Mr. Simons. Could you rephrase it a little bit?

Q. I take it that in determining what price you are going [264] to bid for different lots of gas, you would consider not only the price which you are paying at the wellhead, but the cost to Tennessee at the point of entry into the Tennessee system; am I correct in that assumption? A. Incrementally speaking, you mean?

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Q. No, on a per Mcf basis. A. Not exactly—

Q. Perhaps I could give you an illustration. I may not have made myself clear. A. All right.

Q. Suppose you had an offer on the part of some seller to sell you gas at 18 cents at Location "A"; you had another offer of another seller to sell you gas at Location "B" for 16 cents; would you not consider, in addition to those initial prices, the cost to you of bringing it to the nearest point on your system? In other words, if you determined that it would cost you, let us say, six cents per Mcf to bring that gas from Location "B" to your system, as compared, let's say, to one cent per Mcf to bring the 18-cent gas—

Presiding Examiner: I don't think you have to labor the point, I think it is so elementary the answer is yes.

Isn't the answer yes, Mr. Witness?

The Witness: But this gas will probably go through some facilities where other gas comes in, too, and I don't think I could separate it out as it would apply only to the gas that [265] we will take from these particular leases.

By Mr. Simons:

Q. Is other gas going to flow through the $16 million of facilities that we are talking about? A. Perhaps not, but all of this gas may not flow through that particular line. We have other lines in south Louisiana that might be connected with this line that you are talking about.

Presiding Examiner: He is talking about the line coming in from your off-shore points to your main line system.

The Witness: All right, sir.

Presiding Examiner: Now, in determining the advisability of purchasing gas, he is asking you whether you wouldn't add to the Mcf of the gas at the wellhead the Mcf cost of getting gas to your main line system before you made a decision, and the answer is "yes", isn't it?

The Witness: Yes, sir, that is right.

Mr. Simons: That is what my thought was, Your Honor.

The Witness: You are talking just about the line that comes to shore.

Mr. Simons: At the present time, yes.

The Witness: All right.

By Mr. Simons:

Q. Of course, I would include to your system also later, but right now I will limit it to that. Did you make any study [266] in attempting to evaluate this 21.4-cent price, or 22.4-cents, when you include the taxs, in order to compare it with gas that you purchased, let us say on dry land in Louisiana at the present time? A. I think, in connection with our design engineers, I did, yes.

Q. Could you tell me what the cost was? A. I don't recall.

Q. Would you go about it by taking the cost of the facilities and figuring the return, tax on the return, and the depreciation, applying that to the proposed cost of the facilities to get an annual cost, and then applying that to the annual volumes of Mcf to proceed through that line? A. Well, I suppose you could go about it that way, yes.

Q. Well, how would you go about it? A. Approximately in that fashion.

Q. Then would you attempt to add in the costs of transmitting the gas, whatever operating costs there might be? A. Yes.

Q. Do you have any estimate of the operating costs? A. No, sir, I don't.

Q. If someone were to attempt to do this from the information in the record, would the appropriate figure on the facilities be the $16 million figure that you gave yesterday? A. Yes, sir, that gets the gas to our system at Kinder, [267] Louisiana.

Q. And would you accept, subject to check, the figure of 3.15 cents per Mcf as being the figure for 240,000 Mcf a day, based on that $16 million figure for return, tax on return and depreciation, taken at the rates in Tennessee's latest rate filing? A. Would I accept that?

Q. Subject to check. A. No, sir.

Q. You would not? A. That is right.

Q. Did you obtain any advice from any other department in Tennessee as to the maximum price which Tennessee could pay for this gas? A. No, I don't recall any, Mr. Simons.

Q. You were given a more or less free hand? A. That is correct.

I would talk this situation over with all the departments that were affected by the purchase of any gas, as we always do, but—in other words, I wasn't told to go to 21.4 cents and quit, or anything like that.

Q. Then you were not directed to get the gas at any price? A. No, sir, I was not.

Q. It is possible that a price could have been demanded

[268] by C.A.T.C. which you would have rejected? A. certainly, yes, sir.

Q. Could you explain how the step escalation figure was arrived at? I take it this is the first time this particular step escalation provision appears in any Tennessee contract? A. Well, the difference being the amount, you mean, during the period?

Q. Yes, sir. A. Well, as to how it was arrived at, we felt that the exclusion—well, it was arrived at in this fashion: In weighing all the factors involved in negotiating the contract and the fact that the contract did not include what is normally called a favored-nations clause and a price redetermination clause, it was felt that we could afford to go that high on the step escalation in the negotiations for this gas.

Now, those things aren't arrived at separately and then just all put together. They are all looked at in light of all the other considerations past.

Q. In other words, if you had had a normal step escalation therein, you might have had to pay a higher initial price? A. That may be true, I don't know, but it is certainly a possibility. Or if some other consideration had been different, then perhaps the price would have to be different to compensate, either up or down, for whatever change there might have been in some other consideration in the whole deal, you [269] see.

Q. Just by way of illustration, the transportation of the amount which may be deducted out may be an example of one of the factors that would influence the initial price up or down? A. Frankly, that particular consideration didn't bother us so much, Mr. Simons, because the pipeline is designed so that we can take advantage of the flexibility that

we have in the takes, so we can take these maximum quantities under the contracts, if we so desire, if we need them.

Of course, a large per cent of the time we don't need the maximums under the contracts, and so actually what small volume those liquids in the vapor state might take up—and incidentally, this is very lean gas—probably is not really costing Tennessee anything. That consideration—that particular one, I mean, you singled that one out, and I just wanted to make you realize that that particular consideration we felt didn't cost Tennessee anything, although it might be a convenience to the producer.

Q. Or even of value to the producer? A. Perhaps. I don't know what they are going to do with the liquids, and I understand they don't know right now, either. So it may or may not be, depending on what they do.

Q. Coming back to the figures you gave for '57 and '8 in your direct testimony, excluding this contract, the figures [270] for the two years for 12.54 cents and 12.73 cents, respectively; are you able to state the reason for the increase? A. The reason for the increase from what to what?

Q. From 12.54 in 1957, to 12.73 in 1958, both excluding the contracts involved here. I take it, as I understood your statement, you were not giving any effect to any step escalation or other escalation provisions in any of your existing contracts in arriving at either of those prices? A. That is correct. Neither of those prices reflect any increase under any clause under existing contracts that we are taking gas under. That difference is due to gas which is being tied to the system at the present time in southeastern Louisiana, and the consequential shift in buying pattern on our supply system.

Q. In other words, you would propose in 1958 to take more of the southeast Louisiana gas at 18 cents than you are presently taking? A. Well, there is some that has not previously been physically hooked up to the system. We have been constructing the facilities to hook it up. Of course, as more of it is hooked up, it will affect the weighted average in that direction.

[271] Q. Now, coming back to one of these letter agreements,—I am not sure now just which one it is with reference to the pages here—it is the one which relates to the pipe which Tennessee buys being given to C.A.T.C. A. Yes.

Q. Is the practical effect of that letter such that if the various operations involved there are exercised, this project could go through as contemplated, notwithstanding the fact that Tennessee might not receive a certificate in 11107 until, let us say, December 31, 1957? A. Well, that is not quite right.

The practical effect of it is that in the event Continental or the producers here obtain the physical facilities, the pipe and the fittings and that sort of thing, from Tennessee to construct this system, in that event, then, Tennessee would have the right, I think, in my opinion, to come back in, as you say, as late as perhaps December 31, 1957.

It is my understanding, however, that they have their own pipe and they have certainly given no indication to me that they want our pipe. So I don't know what—what I was trying to say is they haven't done either one.

Q. If they do take your pipe, do they pay you for it? A. Do they pay me for it?

Q. Tennessee. [272] A. Well, either me or the mill. I don't know whether it will be pipe that is actually on the ground right this minute or whether it will be shifted to a mill—

Q. But Tennessee would not pay for it? A. That is correct.

Of course, if we came back in, then we would buy the system back at the cost—

Q. Yes, I appreciate that. A. We don't get it free.

Q. You seldom get anything free. A. Yes, sir, that is right.

Mr. Simons: I think that is all I have, Mr. Witmer. Thank you.

Presiding Examiner: Staff Counsel?

Mr. Geneau: Yes, Mr. Examiner, a few questions.

By Mr. Geneau:

Q. Mr. Witmer, directing your attention to Section 4-B of the contract which is on page 8, in essence, that section provides for the dedication of additional gas reserves in the East Cameron, West Cameron, and Vermilion areas before August 1st, 1957.

Have any such dedications been made to date under this provision? A. No, sir, there have not.

Q. Are any contemplated in the near future or expected, [273] that you know of? A. I don't know, Mr. Geneau, whether any are or not.

Q. And if such reserves are dedicated, is it your understanding that the parties will respectively seek from the Commission the authority necessary to sell this gas and/or

to construct and operate the facilities necessary to take it? A. Well,—

Mr. Littman: I object to that, Mr. Examiner. I object to the portion of it that asks this witness to state what the producers will do in that event.

I think he can only speak for Tennessee.

Mr. Geneau: He can speak for his understanding of the provision, can he not, Mr. Examiner, and that is all I am after.

Presiding Examiner: The same question came up yesterday and the Examiner sustained the objection.

The objection is sustained again.

By Mr. Geneau:

Q. As to Tennessee, Mr. Witmer, excluding the applicants? A. I don't know, to tell you the truth, I hadn't even thought about that. That would have to be decided at the time it came up.

Q. Yet you thought about it at the time you drafted [274] that particular provision, did you not, Mr. Witmer?

Mr. Littman: Let me interrupt. It might save time.

I will simply say this, that Tennessee will apply for any and all authority that is necessary to be applied for in that event. Right at the moment, frankly, I am not prepared to say whether it would require an additional certificate. If no additional facilities are required, I don't know.

But whatever is required by the law and the Commission's rules and regulations, you can rest assured that Tennessee will comply as it always has in the past.

Mr. Geneau: That is satisfactory.

Mr. Foster: Mr. Examiner, lest the record might be subject to misconstruction through an absence of a statement at this point, Mr. Littman's statement would apply thoroughly in the case of Atlantic and Cities Service.

Mr. Woodfin: Well, we are all going to join the party. I will say this, Mr. Examiner, as a lawyer, I have no idea, I am just like Mr. Littman, I would have to wait and see if a certificate is needed. But if one is required, we certainly would make the application.

Mr. Voight: Sir, that applies to Continental, also.

By Mr. Geneau:

Q. Mr. Witmer, if I hadn't been overruled, I would have asked you the same thing in connection with Section [275] 4-C, and then I would have gone on to Section 4-D, and asked you why a provision concerning the obtaining of necessary certificates, if necessary, are lacking as to 4-D but were not lacking as to the two prior sections, and asked if that was just a mere oversight, perhaps. A. I would say probably just a mere oversight, if it is required to be in there.

Q. Section 5 of the contract, Mr. Witmer, provides for the initial determination of recoverable gas in place dedicated to these contracts.

Does Exhibit No. 2 purport to be this initial determination? A. Is that Mr. Born's exhibit?

Well, Section 5-A or subsection A of Section 5 provides for an agreement between the parties as to the amount of reserves.

Exhibit 2 is Mr. Born's interpretation of what the present proven recoverable reserves are. It does not amount to an agreement, as such, between Mr. Born and the other parties to these contracts.

Q. Let me reframe my question, then, Mr. Witmer. A. All right.

Q. As far as Tennessee is concerned as of this time no such determination has been made? A. We have made our determination but there has been [276] no formal agreement with the producers as to what they think is in place there. I can only refer you to Mr. Born, and he says he is in substantial agreement with them.

Q. But until such time as both Tennessee and the applicants agree to some figure, no such figure has been determined? A. That is correct, sir. Yes.

Q. In connection with Section 8 of the contract, Mr. Witmer, which is on page 15, I believe, under subsection C in the very last sentence, a minimum pressure of 700 pounds per square inch gauge is provided.

Could you enlighten me as to how or why that particular figure was arrived at, or derived? A. Yes, sir.

Since the system required to gather this gas will be under water, and since some of the fields closer in that may be connected to this system during the term of this agreement might, through some reason or another, become depleted to a lower pressure sooner than those farther out, to a great degree, or, on the converse if some of them farther out may become depleted first down to a lower pressure, this was provided so that the system could still be taking gas from those areas as long as it could make the 700 pounds per square inch gauge.

That was quite a bone of contention in the negotiations

[277] because you can't build an accretion station out there in the water somewhere, and we went through all sorts of gymnastics trying to arrive at how to do this thing.

Q. Is that figure in any way related, say, to the dew point which would be involved in connection with this gas that would be transmitted through this line? A. No, sir, it is not.

If I may, I would like to clear up something about that.

Q. Certainly. A. This gas will be—necessarily has to be separated on the platform so that the water can be knocked out. Now, when I say "separated," I mean the condensate or the distillate taken out.

Unless cold temperature separation is used, it will then have to be put through a dehydrator to extract the water down to the quality specifications, as included in Section 7 of the contract.

The only practical way to then deliver the gas is to measure the gas or meter the gas on the platform when it is dry.

Then, if Tennessee, according to the provisions of this contract, is to haul that condensate or distillate to shore, then it will be recombined with the gas stream after the gas has been metered and will go back into the vapor state and just be hauled along with the gas as just a little [278] more gas.

Now, it so happens that this gas is very lean and the amount of vapor that will result from the re-introducing of that liquid phase back into the system, into the line after the gas has been measured dry, is going to be very minor.

As I stated before, they haven't decided yet whether to even put it back in there or not; that is up to the producer, of course, as is provided in the contract.

Regardless, though, the 700 pounds has nothing to do with the dew point. They still have to get the gas and deliver it to Tennessee at the same quality as is provided in all of Tennessee's other contracts. And in the event we do haul the liquids to shore and the producers re-extract some liquids from the stream, then all Tennessee has to pay for is the residue gas at the end of that plant. The gas will be re-metered at that point because that is the point where it will satisfy the quality specifications set out in Section 7 of the contract.

So, actually, there has been some misunderstanding about how the thing will practically operate. That is the way—that is the only way it can operate. I just want to make that clear for everybody's convenience.

Q. That cleared it up very nicely.

In terms of your thinking, Mr. Witmer, do you think [279] of the East Cameron, the leases located in the East Cameron area, the West Cameron area and the Vermilion area, as being separate fields? A. They are separate fields, yes, sir.

Q. They are definitely, then, three separate fields with which we are involved in these contracts? A. At least three, yes, sir.

Q. At least three? A. Additional drilling may prove otherwise, but that is the way it looks now. There may be more.

Q. And has Tennessee ever had occasion to transport gas from these three fields heretofore, to your knowledge?

A. No, sir, no one has ever transported any gas from these fields.

Q. And in terms of the area of this field, are they restricted to the leases that are shown on the maps which have been introduced in evidence here? A. Yes, sir, they are.

And this dedication—I know it is a little odd—actually, the dedication is limited here by four means: It is limited arealy by the lease lines; it is limited as to amount, at least the initial dedication is, up to the two trillion feet; it is limited by the reservoirs as indicated by the sand sections in the Exhibit A, and it is limited in the Vermilion area as to depth.

[280] Within those limits, as Mr. Born has testified, he now thinks there is 1,673,000,000,000 cubic feet of gas recoverable, dedicated to Tennessee.

As has been stated on the record, the additional gas necessary to make up two trillion feet, if found within those limits, will also be dedicated to Tennessee, automatically.

Additional gas, if found within or without those limits will fall under the various provisions of Section 4, and consequently may not ever be dedicated to Tennessee, or may, within those provisions.

Mr. Geneau: We have no further questions, Mr. Examiner.

Presiding Examiner: Are there further questions before redirect?

Mr. Ryan: I have a couple of questions, Mr. Examiner.

Transcript of Hearing Held March 1, 1957 [Vol. II]
William W. Witmer—Recalled—Cross

By Mr. Ryan:

Q. Mr. Witmer, in answer to a question from Mr. Simons, I believe you used the term "lean gas." Would you explain what you mean by that, please? A. Yes, sir. This particular gas is Miocene production. I think it is, at least in my experience, it seems to be fairly normal Miocene gas. When I say it is "lean", I mean that it has a particularly low distillate or condensate content. Based on what we have been able to find out, [281] the figures have varied all the way from 6 to 11 barrels per million cubic feet. But whether it be 6 or 11, both would indicate that it is very dry gas.

Also, the low temperature fractional analysis of the gas indicates how lean it is. For instance, the low temperature fractional analysis of gas in the largest field involved under these contracts is 94.68 percent methane, which leaves, of course, very little room for there to be anything else. Thirty-one-hundredths of one percent is carbon dioxide, and various others contained in the analysis are of relatively small percentages.

That is one reason why the hauling to shore of the distillate didn't bother Tennessee, because we realized that there was very little distillate in the stuff.

Q. That analysis that you referred to, is that an analysis that was made by the applicants in this case? A. I don't know who made it. I imagine some laboratory made it, Mr. Ryan. I just have a copy of the figures themselves. I don't know who made the thing.

Q. I was a little curious. I asked Mr. Born yesterday if he had seen any analysis, he being the geologist, and he said he had not. I presume this is something you

have seen that Mr. Born has not. A. Well, probably so. But I am not too surprised at that. He doesn't do exactly with the same—the people [282] he dealt with evidently didn't have it.

Q. You gave a figure of 6 to 11 barrels for so many million cubic feet. What was that again? A. That is correct.

Mr. Ryan: Would the reporter please read the question?

(Question read)

Presiding Examiner: What he is saying, it is 6 to 11 barrels per million cubic feet.

The Witness: I thought you asked me if that was what I said. Maybe I misunderstood your question.

Mr. Ryan: Could we read the question back, please?

Presiding Examiner: Let's not stop. Let's go on. It takes time for the reporter to find it and read it.

By Mr. Ryan:

Q. How many feet involved in the 6 to 11 barrels, that is my question. A. One million cubic feet.

Q. What is that? A. One million cubic feet.

Q. One million cubic feet. Where was this low-temperature fractional analysis taken from? What particular reservoir? A. As I stated, to the best of my knowledge, it was taken from the Block 192 field, which I think is the largest field involved here.

[283] Q. Any particular reservoir? A. I don't know which reservoir it was. As I said, it is all Miocene pro-

duction, Mr. Ryan, and it is going to be pretty much the same.

Q. It is one analysis of one sand? A. I don't know whether it is a combined analysis from the well or not. The well may have been dually-completed and flowing out of two sands; I don't know.

Q. Do you have any opinion what volumetric percentage of hydrocarbons can be extracted by the producers and still leave the gas at 1,000 Btu that is ultimately received by Tennessee? A. Well, Mr. Ryan, pure methane is less than 1,000 Btu's, I believe, as I recall.

Based on the analysis that I have just told you about—of course, it depends on what sort of processing they use, but even the most efficient one that I know of that would be economical, I don't see how they could recover as much as 5 percent of the stream.

In fact, I am sure they couldn't. Part of it, of course, is inert gases, carbon dioxide and things like that, which are no good to anybody.

So, to raise it to a thousand Btu's. they would have to leave some of the other hydrocarbons in there.

Q. Do you have— [284] A. So, I would say it would be less than 5 percent.

Q. Did you have a copy of this analysis when you entered into the contract for Tennessee? A. I don't recall when the first time was I saw the analysis, Mr. Ryan. We discussed about—I will rest you this far: We discussed how much distillate was in the gas and that sort of thing, of course, while negotiating the contract. Whether we had that particular analysis or not, I don't remember, but we did know about how much distillate was in the gas.

Q. Now, in answer to a question by Mr. Geneau, you

explained what would happen in metering the gas that Tennessee eventually got after extraction of the liquids.

Is there anything in the contract which spells out that procedure? A. Well, you have to read, perhaps, two or three parts of it in conjunction, but as it says, the gas to be delivered to Tennessee has to be of a certain quality, —one of the provisions of which will mean that this distillate has to be knocked out before it is even acceptable to Tennessee.

Certainly, in the light of that, we wouldn't have to pay on some volume that doesn't even meet the quality specifications of the contract, if you understand what I am driving at there.

[285] Q. No, I am afraid I don't. When you say "distillate knocked out," does that mean that Tennessee won't accept gas which is in excess of a thousand Btu's? A. No, sir. You can have gas way in excess of a thousand Btu's which might contain hydrocarbons which would not drop out under the conditions in your pipeline.

On the other hand, you might have gas a little over a thousand Btu's which would have hydrocarbons in it that might drop out under the conditions in your pipeline.

What I am saying is, that based on the composition of that gas, it is Miocene gas, somebody has to knock out this distillate before Tennessee, or for instance before it can get to Tennessee's Kinder compressor station.

If they didn't do it, Tennessee would have to do it, and the contract so says, that they will deliver gas to Tennessee that meets the quality specifications contained in Section 7, one of which says that it cannot contain any substance that might become separated from the gas in buyer's pipelines, and so forth.

Transcript of Hearing Held March 1, 1957 [Vol. II]
William W. Witmer—Recalled—Cross

Now, consequently, we then would pay on the metered gas as it leaves the separation or processing facilities. I don't know what kind of facilities they would install. That is up to them, you see. That certainly hasn't been decided, nor have they decided to re-inject these liquids for sure back into the gas.

[286] Q. Do you expect distillate will be taken out of the gas before it is put into Tennessee's facilities offshore? A. It has to be taken out to dehydrate it and meter it for lease purposes, yes, sir. You can't meter it with all that stuff in it.

Q. So, the distillate could be removed at the platform and the hydrocarbons from that stream could be removed on shore, isn't that correct? A. That is possible, I suppose, yes. As I say, they are going to be removed on the platform. You have to do that to dehydrate the gas so you can meter the gas, for the lease purposes. They have to know how much gas runs off each one of these leases, so they can ratio that back.

Q. As far as the hydrocarbons themselves are concerned, there is nothing in the quality specifications that require the removal of them, is there? A. What do you mean by "hydrocarbons"? This is all hydrocarbons.

Q. Well, the— A. Which portion of the gas stream do you mean?

Q. I am not completely sure I understand myself.

Mr. Woodfin: Mr. Examiner, I wonder if this is all necessary on the record? I think Mr. Witmer has explained very clearly that the only point I think which Mr. Ryan was trying to find out, is if Tennessee paid for the shrinkage.

[287] He said under no circumstances do they do that. Any other point seems to me to be laboring something immaterial in the record.

Mr. Ryan: I don't see anything in the contract which spells that out.

Presiding Examiner: You had one chance at cross-examination. This is a final opportunity for you to cross prior to redirect. You are supposed to confine your cross to matters that were developed after your cross-examination.

Mr. Ryan: I won't even press the question under the circumstances.

Presiding Examiner: All right.

Are there further questions before redirect?

Mr. Ryan: Yes, I have an additional question.

Presiding Examiner: All right.

By Mr. Ryan:

Q. You stated in answer to a question by Mr. Geneau, that you felt there were at least three fields involved in this. How did you use the term "fields"? A. What did I mean?

Q. Yes, sir. A. Separate structure is what I was probably—I didn't think at the time of the definition of it, but I think that is probably what I had in mind.

Q. How would they be broken down? [288] A. We usually have been referring to them, and I think Mr. Born also, as the Block 71 Field, 192 Field and 49 Field. I don't know whether the gas under Block 66 is in the same field or not. But that gas is committed to Tennessee by the Magnolia-Continental-Newmont group, and I don't know whether it is in the same reservoir or not.

Q. Do they have any necessary relation to the areas which are referred to as East Cameron, West Cameron and Vermilion? A. No, sir.

Mr. Ryan: That is all I have.

Presiding Examiner: Further questions before redirect?

Mr. Geneau: May I have one more there, Mr. Examiner?

By Mr. Geneau:

Q. You mentioned that the gas under Block 66 is dedicated by M.C.N. to Tennessee; all of it, or just— A. All of their interests.

Q. —or just C.A.T.C.'s interest in that? A. No, sir, M.C.N.'s interest is what I was referring to.

[289] Q. In other words, Tennessee will be buying gas from Continental as the operator and part of that gas will be gas belonging to M.C.N., is that what your understanding is? A. We will be buying gas from the M.C.N. people. I don't know whether it would run through Continental's facilities or not. I think Magnolia is the operator for the M.C.N. group. I believe that is correct.

Q. Is that gas included in these? A. No, sir. There was some question yesterday, Mr. Geneau, about what the relationship was there, and I just wanted to straighten that out.

Q. Surely. I thought you had reversed the situation from what is was yesterday. A. No, sir, no, sir.

Mr. Littman: While you are on that subject, may I make an inquiry with regard to that same matter?

Mr. Geneau: Certainly.

Mr. Ryan: Is this redirect?

Mr. Littman: I will defer it.

Presiding Examiner: Further questions prior to redirect? Apparently not. Redirect.

REDIRECT EXAMINATION

By Mr. Littman:

Q. I will ask the question I was about to ask with regard to the M.C.N. gas in Block 66. Is that reserve committed [290] now to Tennessee? A. Yes, sir, it is.

Q. Now, with regard to the matter of the transportation of the hydrocarbons that has been referred to, from time to time in your cross-examination and in Mr. McKinley's cross-examination, I think you stated that there was no charge being made, as such, to the four producers here involved for that transportation; do you recall that testimony? A. Yes, sir, I recall that.

Q. I think you also said recently this afternoon, in that connection, that it really wouldn't cost Tennessee anything to haul those hydrocarbons to shore. Will you please elaborate as to what you meant by that, and your reasons for that statement? A. Yes, sir. In negotiating these contracts, as in negotiating any contracts for the purchase of gas, we attempt to get a certain amount of flexibility in the takes. Then, of course, to utilize that maximum amount of gas that Tennessee would have the right to ask the producer to deliver, we provide the facilities to handle those quantities of gas.

Now, normally we are not depleting those dedicated reserves at the maximum rate. In fact, it would be

actually very seldom that we would be—well, it would be quite an emergency if we were depleting all the reserves dedicated to Tennessee at this maximum rate.

[291] Since we have this flexibility everywhere, the buying pattern varies accordingly. Now, we, in this design to haul this gas to Tennessee's system, of course, we have provided capacity to haul this maximum amount in case we do need it, and the maximum amounts that we have the right to ask for.

A certain amount of that, that capacity normally will not—well, it won't be in use normally. We won't be asking for the maximum amount. As I have stated, when I was talking about the analysis of this gas and how much distillate it contained, the amount of extractable hydrocarbons that we would be hauling to shore under this contract are almost nil, they would take up almost no space in the pipeline.

But to make a long story short, they would take up space that would normally be there anyway in the normal course of events. Consequently, we didn't feel that Tennessee was suffering any expense in hauling these so-called liquefiable hydrocarbons to shore for the benefit of these producers.

As I stated a moment ago, somebody, of course, has to take those liquefiable hydrocarbons that would drop out under the conditions in the pipeline and the compressor station that the gas has to pass through.

Q. Is the matter of the transportation of those hydrocarbons all a part of the consideration of the contract? Is that one of the considerations? A. Yes, I am sure that probably might be worth something, [292] I don't know what, to the producer, but we felt we were giving nothing

in granting that, but it was part of the consideration in making this whole overall deal.

Q. Some reference has been made from time to time throughout your cross-examination concerning the letter which is set forth starting on page 110 of the transcript, which gives the producers an option to construct the gathering system, the marine gathering system.

Now, first in that regard, is it your understanding that it is an option and not something that they are required to do one way or another? A. It is an option on the part of the producers, yes, sir, that is correct.

Q. Now, assuming that Tennessee or the producers were unable to obtain satisfactory certificates within the meaning of that term as used in the contract by April 1, 1957, is there any avenue that you know of that would be open to these producers to construct the gathering system without exercising that option, and thereby—and in that way terminate these four contracts that have been designated Items "A" to "D", inclusive? A. Of course, all they have to do is—well, they can build the facilities themselves or even not build them at all. Of course, they can do what they will with their gas, if the satisfactory certificates are not obtained by that time. The [293] only time that Tennessee would have a chance to have its time to obtain a satisfactory certificate extended would be if the producers decided to build the system themselves and borrowed the pipe—not borrowed, but obtained the pipe and all the other facilities from Tennessee to do so.

Q. In other words, the option is related to—is connected up with the obtaining by the producers of the pipe from Tennessee with which to build the facilities?

A. Yes, sir. If they get their pipe from any other source, whatever it might be, then, of course, they can cancel the contract on the 2nd of April, providing these satisfactory certificates have not been issued, and there is nothing Tennessee can do about it.

They have no obligation to get their pipe from Tennessee, and as I have stated, it is my understanding they have pipe to build this job, and did have when we first started negotiating with them.

Q. Well, to button the matter up, would you say that the letter option which we have been talking about, does that in any manner lessen the need, in your estimation, of the urgency of Tennessee and these producers to obtain certificates by the time specified in the contracts? A. No. Of course, as I said, if the certificates are not obtained by the 1st of April, the contract is cancelable, just as it provides. And the only way that it might be extended [294] is if they happen to get the pipe from Tennessee.

Q. I don't want to go into the details of the prices that everyone is paying everywhere in the southwestern part of the U. S., but there hase been some questions and answers on this record that I think need some additional explanations to complete the story.

First, mention has been made about a 17-cents price which Tennessee is paying to these same producers, these same four producers here involved in the so-called West Delta area, which is, as I understand it, an off-shore area; right? A. Yes, sir.

Q. Now, is there any gas now being sold in that area, in that West Delta area, at prices in excess of 17 cents? A. In the area encompassed by our contracts, where we pay the 17 cents, Texas Gas pays 20—

Q. By "Texas Gas", give the full name of the company.
A. Texas Gas Transmission Company.
Q. That is one of Mr. Ryan's clients. All right.

Mr. Ryan: Mr. Examiner, I object to that. Mr. Littman, if you can't keep your tongue—

Presiding Examiner: Come to order, counsel.

Mr. Ryan: That is completely improper and out of order.

Presiding Examiner: It was not.

Mr. Ryan: It certainly was.

Mr. Littman: It must have hit a tender nerve.

[295] Presiding Examiner: Go ahead, counsel.

The Witness: Southern Gas, out of Birmingham, has bought gas for 20¼ cents in this area.

Presiding Examiner: Who is that?

The Witness: Southern Natural. And as is the case in every new area where we have gone to obtain gas, and certainly as was the case in that area before we even got our pipeline built after we had contracted for large quantities of gas, there were, of course, other buyers in there who had leap-frogged their price. That happens everywhere, and I wouldn't be surprised if it happens in this off-shore area.

By Mr. Littman:

Q. I believe you mentioned in the course of your cross-examination that in the southern or southeastern portion of Louisiana, on-shore, on dry land, there are some prices that are higher than those that are being paid by Tennessee in those areas. What are those prices, what are the names of some of the larger companies paying them?

A. I think everybody is familiar with the fact that American Louisiana and United Fuel both have contracts that started out at 20 cents. I mentioned Texas Gas, Southern Natural. It is my understanding that there are some intrastate markets which are higher than Tennessee pays. Olin Gas, for instance, pays 20 cents in one spot that I know of. And all of those prices are for gas, for lesser reserves and certainly [296] lesser potential than that included under these contracts.

Q. And in those areas the wells start on dry ground and not as here, in some 90 feet of water; is that right?
A. Yes, sir, that is correct.

Q. Now, to conclude this particular line of inquiry, I want you to frankly state why you, as the negotiator for Tennessee of these four contracts, were willing to pay the 21-cent prices here involved for the gas, well knowing that you had entered into a contract with these same producers to pay 17 cents in the West Delta area, which is also an off-shore area.

Will you summarize those reasons?

Mr. Kirby: Mr. Examiner, I object to that, because on cross-examination I asked him the question as to what were the considerations that made him go into this 21 cents, and he said he would have to go through the whole contract. I don't think we should have it now after a luncheon recess when he has apparently been able to determine what his reasons are.

Mr. Littman: That isn't my question.

Presiding Examiner: Objection is overruled.

Mr. Ryan: I had not objected because I think

this whole line is fairly relevant, but it doesn't comport with the Examiner's rulings on my questions.

Presiding Examiner: I am not going back and argue my rulings with counsel just because he may not see the consistency. [297] The objection is overruled.

The Witness: What was the question? How was it worded?

Mr. Ryan: May we have the recess?

Presiding Examiner: We had better have the answer to the question first.

(Question read.)

The Witness: In the first place, this involved a considerably larger amount of gas reserves to Tennessee than did the contracts in the West Delta area. In addition, this gas, as I stated before, was certainly in my estimation better located on Tennessee's system, and certainly afforded a much larger potential for Tennessee to purchase large additional reserves in the future, which is, of course, one of the main concerns of any pipeline.

It also, of course, afforded Tennessee an entry into an area which was just now being developed, which seemed to have great promise, as far as the discovery and development of natural gas reserves is concerned.

The same facts must have been apparent to all the other pipelines in that whole area. In fact, one of them was bidding strongly for the gas that would have had to build 600 miles to get to it. Certainly I want to emphasize the point that this was

the only sizable package of gas for sale on the Gulf Coast.

In fact, as far as I know, it is probably the largest one particular batch of gas that has ever been sold under one deal [298] on the Gulf Coast. Its deliberability is good and it is just such, at the time and under the circumstances and the advantages it had to Tennessee, that it required or could command the price that we negotiated for.

By Mr. Littman:

Q. Did the fact that the price of the West Delta gas has risen to I believe some 20 cents, as you mentioned earlier, also enter into your deliberations? A. Well, of course, we knew—

Q. I mean price paid by others? A. Of course, we knew that we had already been leap-frogged in Louisiana. As I say, our price was leap-frogged twice before we got our initial system built in Louisiana. So actually we were hung from raising our price in that area. Those contracts contained favored-nation clauses, and so forth, and, of course, that is another reason that it behooved us to make this contract and go into a new area where we would not have to trigger any of Tennessee's existing clauses.

Also, at the time we bought the West Delta gas from these same producers, we were buying gas from other producers in that same area, and the price was established, and we bought as much as we could because we knew that somebody would be following right in our tracks buying up as much as they could at a higher price. It happens every time.

Transcript of Hearing Held March 1, 1957 [Vol. II]
William W. Witmer—Redirect

Q. As the negotiator for Tennessee, Mr. Witmer, did you [299] try as hard as you knew how to obtain the lowest possible price for Tennessee in these negotiations?

Mr. Kirby: I object, on the ground that that calls for a conclusion, Your Honor, that has to be determined from all the facts in the record.

Presiding Examiner: He is entitled to say it.

The Witness: As I stated, the negotiations for this gas started in October, 1955, and I attempted at first to buy this gas for 14 cents. There was no other gas for sale on the Gulf Coast, with the exception of this and the West Delta gas that amounted to anything, and to obtain any gas at all, well, you had to deal on this gas, that is all there happened to be at that particular time. I might add that is about all that at that time had been offered for sale since the Phillips decision, that were in any sizable amounts.

So we attempted to buy the gas for much lesser prices and we were unsuccessful at that. On the other hand, we think that the prices we have paid for this gas are certainly not out of line in consideration of circumstances at that time and now in consideration of the amounts of gas that we have now under contract.

Mr. Littman: Mr. Examiner, I see we have passed our usual recess. I may not have but a very few questions.

Mr. Woodfin: Pardon me, Mr. Littman. Before any further talk goes with respect to the recess, I am wondering if it [300] might be possible to push forward here and forego the recess for a little

while, unless it is absolutely demanded. Some of us have to get back to Texas and attend another hearing on Sunday. We are past four airplanes now, and about to miss the fifth one. If it is at all possible, I would like to try to conclude this proceeding.

Presiding Examiner: The Examiner has no intention of sitting beyond five o'clock.

Mr. Littman: I will forego my reference to the recess, Mr. Examiner, and I will say I have no further redirect.

Presiding Examiner: Are there further questions of the witness?

Mr. Ryan: Yes, I have a few.

Presiding Examiner: The hearing is recessed for five minutes.

(Whereupon, at 3:36 p.m., a recess was taken to 3:41 p.m.)

Presiding Examiner: The hearing will be in order.

Any further questions?

Mr. Geneau: I would like to state that the questions which Mr. Littman just put to Mr. Witmer concerning the other prices surrounding the gas surrounding the fields—or the gas in this instant proceeding, if that was put forth for the purpose of showing the justness or the reasonableness of the 21.4 price, then I object to that, but if those questions were put merely in connection with showing that this was the best [301] price or the only price at which Tennessee could obtain this gas, then I have no objection. I believe that would be consistent with your prior rulings.

Mr. Littman: If you would like to hear from me, Mr. Examiner, as to why I asked those questions—there was really nothing new in these questions, it was simply—as Your Honor will note—each one was predicated upon something that had been elicited during cross-examination.

I was simply trying to bring out the whole story for whatever purpose it might be. There were some questions that permeated through our objections, questions that got through, and I would be remiss in my duty had I not cleared up the record as I tried to do in by redirect examination.

Presiding Examiner: Very well.

Mr. Littman: That was my purpose. I had no motive of going into a full blown rate case hearing. I had no idea of going into the reasonableness of the rates, per se. But since rates in the area had crept into the record, I wanted the whole story told as to those particular rates. That was my purpose.

Presiding Examiner: Very well. Any further questions by counsel for Brooklyn Union and Long Island Lighting?

(No response.)

Presiding Examiner: Apparently not.

Lake Shore Pipe Line Company.

Mr. Ryan: Yes, Mr. Examiner.

[302] *Recross examination by Mr. Ryan:*

Q. Did I correctly understand you to say, Mr. Witmer, that there are pipelines who are paying 20 cents for gas in the West Delta area? A. No, sir. I said in the area

covered by our contracts, which include the West Delta contracts. The West Delta area, Mr. Ryan, is just a small area within that particular pricing area of Tennessee, you see. We buy gas along the Mississippi River Delta and the West Delta area is contiguous to the Delta, it sits right against it.

Q. Were you referring to gas purchase and sales contracts in Louisiana? A. Yes, sir.

Q. Strictly Louisiana? A. Well, yes, sir. I think the West Delta area is probably all within Louisiana, I am not sure it is, I imagine it is very close in.

Q. Were you referring to gas which is purchased on on-shore, as opposed to gas which is purchased off-shore? A. I was referring to both.

Q. What contracts were you referring to in the off-shore regions? A. Contracts which Southern Natural has with Phillips, for one. That is one I can think of right offhand.

[303] Is that the only one? A. I don't know who all they have contracted with. I think also with Magnolia. Let me see. Those are two that I can think of right offhand.

Q. Are those sales being presently made, to your knowledge? A. I don't know whether they have started deliveries under those contracts or not.

Q. Do you know whether certificates have been issued or not? A. No, I don't know.

Q. Do you know how long ago those contracts were entered into? A. No, I don't.

Q. Would it have been within the past year? A. You mean within 1956?

Q. Within 1956. A. Yes, sir. I suppose they would have. I think so.

Q. And you did not indicate that any of the prices were equal to or in excess of the price which is involved here. A. Oh, no.

Mr. Ryan: I believe that is all, Mr. Examiner.

Presiding Examiner: Public Service Electric and Gas.

Mr. Kirby: Just a very few, Mr. Examiner, please.

By Mr. Kirby:

[304] Q. On redirect-examination, Mr. Witmer, I think you said that you started in your negotiations on these contracts at 14 cents; am I right? A. Yes, sir, that is correct.

Q. And then negotiations continued. And you wound up with 21.4 cents. Now, you stated that the competition was keen; in fact, that you knew of one pipeline that was bidding strongly and he was 600 miles away, or it was 600 miles away; is that correct? A. Yes, sir.

Q. You stated, in answer to one of my questions earlier, that you did not know the prices that they had offered. Now, I would just like to know whether or not this bidding is under a sealed bid procedure, or did you have a general price range as you negotiated? A. I wouldn't say it was under what you would call a sealed bid procedure. I know just about what the other bidders bid, but it was all hearsay; I mean the way you find those things out and everything. So I would just as soon not go into that.

Q. All right. But you knew at the time, for example, as Mr. McKinley testified yesterday, that they had to get

their leases into production before 1958 or they would be in jeopardy, didn't you? A. They told me that, yes, sir.

[305] Q. I suppose that was public knowledge to everyone? A. I am sure it must have been.

Q. I gathered from your testimony, in answer to Mr. Littman's questions, that you were definitely, should I say, in a hard-put position in order to meet the competition to get this gas because you testified it was the only big batch of gas you could bid on; am I correct in that conclusion? A. Well, it was a competitive negotiation, yes. I don't know what you mean by this "hard-put".

Q. You were competing with the other interstate pipelines, the other five, to get this one large— A. Yes, we all wanted it, that is right.

Q. You all wanted it? A. Yes.

Q. The competition was solely between or among the interstate pipelines, that is clear, isn't it? A. What do you mean, solely among them?

Q. Well, there wasn't any competition by sellers to get you to take their gas, meaning Tennessee? A. Perhaps not of this particular package. There is always competition among producers to get their gas tied to the interstate lines. Of course, packages of this sort come along very seldom, but there is always that situation.

Q. You mentioned, in answer to another question of Mr. Littman's, that in one of your areas United Fuel was paying 20 [306] cents where you paid 17; is that correct? A. No, sir, where we pay ten.

Q. Where you pay ten? A. That is right.

Q. What was the time variation there? I mean did you have your ten-cent prices considerably, in time, before the 20 cents price? A. I have made ten-cent contracts since they made the 20-cent ones.

Q. You have? A. Yes, sir.
Q. In the same areas? A. Yes, sir.

Presiding Examiner: Is that United Fuel Gas?
The Witness: Yes, sir.
Presiding Examiner: Is that southeastern Louisiana.
The Witness: No, sir, southwestern Louisiana.
Presiding Examiner: What is in southeastern, American Louisiana?
The Witness: No, sir, Southern Natural and United and Texas Gas and Olin Gas.
Presiding Examiner: That is southeastern?
The Witness: Yes, sir.

By Mr. Kirby:

Q. And they were comparable 20-year contracts, I assume? [307] A. They were all 20-year contracts, yes, sir.

Mr. Woodfin: I want to interpose an objection at this point to the comparable 20-year contracts. You say they are 20-year contracts, but we are going to open this record up to a long discussion if we get into a consideration of the contracts which Mr. Witmer has made at ten cents in the pricing area where United Fuel bought gas for 20 cents, because it is simply not the situation.

You can't Erath for ten cents. I don't think anybody has bought Erath for ten cents. There is no sense getting on these big volumes of gas—

Mr. Kirby: This is an argument for the briefs, Mr. Examiner.

Presiding Examiner: All right, proceed.

Mr. Kirby: I thought there was an objection.

Presiding Examiner: The objection is overruled.

Mr. Kirby: I have no further questions.

Presiding Examiner Are there further questions of the witness?

Mr. Geneau: Possibly one, Mr. Examiner.

Presiding Examiner: Probably or possibly?

By Mr. Geneau:

Q. In connection with the negotiation of the price under these particular contracts, Mr. Witmer, I have heard it said that the perfect transaction is when both parties leave the [308] transaction feeling that he has cheated the other person. Is it Tennessee's feeling, after negotiating this contract, that it has cheated the applicants?

Mr. Ryan: I object to that question.

Presiding Examiner: The objection is sustained.

By Mr. Geneau:

Q. Do you think that Tennessee could have driven a harder bargain than they did drive?

Mr. Ryan: I object to that; that is repetitive.

Presiding Examiner: Counsel will stand when you make your objection.

I will permit the question.

The Witness: No, sir, I don't think we could have driven a harder bargain.

Mr. Geneau: No further questions.

Presiding Examiner: Are there further questions of the witness?

Mr. Woodfin: I have one question, Mr. Examiner.

Presiding Examiner: All right.

Transcript of Hearing Held March 1, 1957 [Vol. II]
William W. Witmer—Redirect

Further Redirect Examination by Mr. Woodfin:

Q. Mr. Witmer, when you stated you had bought gas in the southwestern Louisiana area for ten cents, did you mean to infer that you were buying any volumes of gas for any 10-cent contracts, or would you detail the types of contracts or volumes [309] which you have been able to purchase at a ten-cent level?

Mr. Kirby: I thought just a while ago that Mr. Woodfin was objecting to my going into a long discussion of these contracts. Now he is opening up the very same question.

Presiding Examiner: You many answer the question.

The Witness: Any place that you can still buy gas for ten cents today, Mr. Woodfin, it is either distress gas or you happen to be the only pipeline anywhere around it.

Mr. Woodfin: That is all.

Presiding Examiner: Anything further of the witness?

Mr. Ryan: Before the witness leaves the stand. Mr. Examiner, I wonder if the Examiner could tell me if it is appropriate for me to now move—

Presiding Examiner: I will call later for that.

Mr. Ryan: My proof is through this witness, Mr. Examiner, and I want to offer it before he leaves the stand. I have no witnesses to present.

Presiding Examiner: All right.

Are there further questions of the witness?

Mr. Kirby: One question in the light of further redirect, Your Honor, if I may, and that is this:

Transcript of Hearing Held March 1, 1957 [Vol. II]
William W. Witmer—Recross

Recross Examination by Mr. Kirby:

Q. When you said that the only ten-cent gas, and so forth, was distress gas, is that distress gas also 20-year [310] term gas, as I think I asked you before? A. Well, sometimes it is and sometimes it is not.

Mr. Kirby: All right.

Presiding Examiner: Further questions?

(No response.)

Presiding Examiner: Apparently not.

The witness is excused.

(Witness excused.)

Presiding Examiner: Does this complete the offer of each of the several applicants and the intervener Tennessee Gas Transmission Company?

Mr. Voight: If Your Honor please, we would like a ruling on whether or not the applications in these four dockets, which we consider to be our pleadings in this matter, are a part of the record.

Presiding Examiner: They are a part of the record, but they are not evidence. They do not speak in an evidentiary way.

Mr. Voight: In other words, they are in the record for evidence of the fact that they have been filed, and that is all?

Presiding Examiner: Oh, yes.

Have the offers of the several applicants and the intervener Tennessee Gas Transmission Company, have they been completed in this proceeding?

Mr. Voight: Continental Oil Company has completed its [311] presentation, sir.

Mr. Foster: That is likewise true of Atlantic and Cities Service, Mr. Examiner.

Mr. Woodfin: Tidewater has completed its testimony, it being understood that the testimony presented through Continental and Tennessee's witnesses are as well Tidewater's testimony.

Presiding Examiner: Very well.

Mr. Littman: Tennessee has completed its presentation, Mr. Examiner.

Presiding Examiner: Do any of the interveners, other interveners, desire to offer evidence?

Mr. Ryan: My hour has come.

I have previously had identified four contracts as Exhibits 3, 4, 5 and 6. I now offer them in evidence.

Mr. Littman: I think it has been indicated heretofore that we have objection to these exhibits. I will not elaborate. We stand on our objection.

Presiding Examiner: Unfortunately I am not too certain I am too clear on that objection.

Mr. Littman: Well, the objection was made earlier in this hearing by us to these several contracts, as having no particular bearing on the matter before Your Honor. These contracts deal with the purchase of gas by Tennessee from four producers in the so-called West Delta area. The witness has already testified and explained the differences in the price and what governed [312] Tennessee's judgment in the difference in the price, the difference in the time and the difference in the volumes of gas involved, and all those differences.

I just can't, for the life of me, see how the contracts for the purchase of gas in the West Delta area have any particular relevance to the issue at hand, any more so than any of the other contracts

that Tennessee has to purchase gas elsewhere in the U. S.

If these are relevant, certainly all the other contracts that we have would be relevant, and I am going to object to it for that reason.

Presiding Examiner: For what purpose do you offer these?

Mr. Ryan: Mr. Examiner, I think the exclusion of these exhibits would be perfectly consistent with Your Honor's previous rulings as to the questions I asked of Mr. Witmer. And I think, of course, that that ruling would be erroneous, respectfully.

However, in addition to the relevancy generally, which I previously explained, Mr. Littman has opened up the subject on redirect examination of comparable prices in the West Delta area. He specifically stated it was the West Delta area. Now, these contracts, except for very minor differences, are identical with the present contracts, the only differences being that Tennessee has less advantage under the present contracts, in matters other than price, than it does under the West Delta [313] contract.

They have a higher take-or-pay-for, they have to build two more delivery platforms, and the price is considerably higher.

Presiding Examiner: Looking at my notes of what happened this morning, you were interested in Paragraph 3, I think, Section 3-E, of the West Delta contracts, weren't you?

Mr. Ryan: That was a specific question that I asked, Your Honor, that is correct. As I recall,

the question was excluded, or at least the answer to the question was excluded, upon objection. That was only one question in a series which I had.

Presiding Examiner: The objection is sustained.

Mr. Kirby: May I join in Mr. Ryan's offer of these exhibits, offer of proof—

Presiding Examiner: You are in the proceeding, you will have the same benefit. It is understood you will have the same benefit.

Mr. Kirby: That is correct, but I would like to state this as a reason: In answer to Staff Counsel, Mr. Littman stated he wanted to talk about the other contracts so we would have the whole story, whatever it might be, and we want these in for the same reason.

Presiding Examiner: The objection is sustained, the offer is denied, the documents will not be received.

[314] (The documents heretofore marked Exhibits 3, 4, 5 and 6, for Identification, were rejected.)

Mr. Ryan: May I make an offer of proof, Mr. Examiner, that if these documents were received, they would show that the only basic differences in the contracts are the following—

Presiding Examiner: Just a minute. Under Rule 128(b), if the excluded evidence consists of evidence in documentary or written form, a copy of such evidence shall be marked for identification and shall constitute the offer of proof.

Mr. Ryan: I have re-handed the offered documents to the reporter and I understand they constitute the offer of proof.

Presiding Examiner: Counsel, there is only one question: I may have to call for additional copies, and if I do, I will advise you. I think under the rule it appears a single copy will be sufficient. If I have misinterpreted the rule, I will have to advise you.

Mr. Ryan: I understand also, Mr. Examiner, that these contracts constitute rate schedules of the producers which are on file with this Commission.

Presiding Examiner: Very well.

Is there any further evidence to be offered in this proceeding?

(No response.)

[315] Mr. Geneau: I wonder, Mr. Examiner, if I might clear up just one or two little technical mechanical errors that have come to our attention in the application of the applicants in this proceeding?

In the application of Continental Oil Company in Docket 11024, a copy of the contract of Continental with Tennessee is attached. In Exhibit A of that contract, Part 2 of Exhibit A, which is on page 5, at sand interval 7497 through 7591, opposite that is shown Well 72A-1. I should like to point out that the contracts of the other three applicants show that to be Well No. 72A-2.

Mr. Ryan: Is this Item A that you are referring to?

Mr. Voight: That is a typographical error, sir.

Mr. Geneau: And that the same error is made in my copy of Item A in this proceeding, which is the same contract in a different form.

Mr. Voight: That is a typographical error.

Mr. Geneau: Secondly, Mr. Examiner, in the application of Cities Service Production Company in Docket No. G-11046, to which is attached a copy of the contract, referring again to the sand intervals in Part 2 of Exhibit A to that contract, my copy of the application shows the sand interval 10594-10685.

I should like to point out that the other contracts show that second figure to be 10645. I should also like to [316] point out that Item B, which is the same contract which has been offered in evidence in this proceeding, has caught that particular error.

Mr. Ryan: Mr. Examiner, the application in this proceeding is not evidence in any respect. I don't know what relevancy it has that the application has a typographical error.

Mr. Geneau: The applications are on file with the Commission and will remain there, Mr. Examiner. If in the future, someone comes across that, it may cause a question in their minds; that is all.

Mr. Foster: May I state that I would suppose from the explanation given that that is a purely typographical error.

Presiding Examiner: Is there anything further to come before this hearing?

Mr. Woodfin: Mr. Examiner, on behalf of the independent producer applicants in this case, because of the urgency of the time interval involved as shown on the record in this case, we would move

to omit the intermediate decision procedure and request that the matter be presented on briefs to the Commission at as short a possible interval of time as might be fixed for the filing of contemporaneous briefs and then reply briefs to those.

We make that request in accordance with the applicable [317] rules and regulations of the Commission.

Mr. Littman: On behalf of Tennessee Gas Transmission Company, we join in that request.

Presiding Examiner: What is the position of the other participants with respect to the motion? First, the applicants?

Mr. Foster: Mr. Examiner, the motion was phrased as one made on behalf of all of the applicants, and we do concur, that is, Atlantic and Cities Service.

Presiding Examiner: Continental?

Mr. Voight: Yes, sir, it was made on behalf of Continental, also.

Presiding Examiner: The interveners Brooklyn Union Gas Company and Long Island Lighting?

(No response.)

Presiding Examiner: Lake Shore Company?

Mr. Ryan: We support the motion for omission of the intermediate decision procedure, Mr. Examiner.

Presiding Examiner: Public Service Electric and Gas Company?

Mr. Kirby: Mr. Examiner, I would make a suggestion that I think in a case as important as this, that the Commission should be entitled to the

time to investigate and evaluate the field study that they are talking about they are making or having made in their latest order that [318] they issued in the Champlin Oil and Refining Company, Docket No. G-9277, in which they say they are making a comparable field price study.

I think they should have the opportunity to take that. I would think that before stating my position on the motion that I should state that I would move that this record be held open until they could have that opportunity. It is some time in April they state they are going to have it ready.

Presiding Examiner: That is another motion.

What is your position with respect to the motion to omit?

Mr. Kirby: First, I want leave to make that motion. They might seem inconsistent. On the second phase, or rather the first motion, I will support the motion to omit the intermediate decision procedure of the applicants, but not on their grounds, your Honor, but on the ground that in the Tamborello case the Commission has stated that the question of price and the reasonableness of it in a certificate case for independent producers is a Commission decision.

Mr. Foster: I just wanted to be sure that Mr. Kirby knew, Mr. Examiner, that the Champlin Oil and Refining matter is set down for hearing commencing April 17, which is at least 17 days beyond the April 1 deadline facing the applicants in this case.

[319] Are you aware of that fact?

Mr. Kirby: Yes, but there are two other cases already started and the field price study will be available around April 1. I only cited that to acquaint the Examiner with the study being made in the Sinclair case right next door.

Mr. Foster: I think Mr. Kirby may not be aware of this, but I am familiar with the details on that, Mr. Examiner. It happens I represent Champlin. In the proceeding going on simultaneously with this one across the hall, it was developed on the record within the past two days that the field price study to which you refer will not be available for at least a month, I believe, or several weeks, I think was the exact phrasing used, beyond the expected April 1 date.

Mr. Kirby: Some time in April, they were supposed to let the Examiner in that case know the day, I believe.

Mr. Littman: Mr. Examiner, I should have stated along with my concurrence with the motion to dispense with the intermediate decision procedure that it seems obvious that with an April 1 deadline date staring us in the face, that it would be utterly physically impossible to go through the intermediate decision procedure with the usual 20 days allowed for the filing of exceptions and time to be allowed for the Commission to take action after the filing of a report, to say nothing, of course, of the time it would take, even if done in the most expeditious manner by the [320] Examiner. It would be just impossible, physically, to do that. And these applications in which we are so

very much interested, we would then run the risk of termination on April 1st.

Therefore, I wanted to state that that was our reason for asking that the intermediate decision procedure be dispensed with in this particular case.

Presiding Examiner: What is the position of Staff Counsel with respect to that?

Mr. Ryan: Before that, I would like to add to what Mr. Littman said, that we also think that it would be physically impossible in view of the fact that there would probably be exceptions filed to any decision of the Presiding Examiner to get this before the Commission in time for this April 1 deadline.

Presiding Examiner: What is the position of Staff Counsel?

Mr. Geneau: If there are no objections to the waiver of the intermediate decision procedure, Staff concurs with the motion to waive, Mr. Examiner.

Presiding Examiner: It appears that all parties of record present concur in such motion.

Mr. Woodfin: Mr. Examiner, in that event, as I understand the rule, we may presume that the intermediate decision procedure will be omitted unless we are otherwise [321] informed.

I would propose, Mr. Examiner, that the matter be handled by the filing of simultaneous briefs by applicants, staff and interveners, to be filed not later than Thursday next, with reply briefs the following Monday.

Mr. Ryan: It is physically impossible, Mr. Examiner.

Presiding Examiner: Is there any other suggestion as to dates?

Mr. Ryan: I am sure I will have, Mr. Examiner. Let me look at my calendar.

Mr. Littman: Mr. Examiner, in view of the shortness of this record and the limited issues involved in this proceeding, we think that would be a reasonable amount of time, and we concur in the suggestion.

Mr. Ryan: Mr. Examiner, we are not going to know in the first place until ten days from now whether the Commission has or has not omitted the intermediate decision procedure. That is just one factor.

Now, it may be that the record in this proceeding is only two days, but I think that the issues involved are fairly complex and they are very important. It is certainly going to take me a lot longer than five or six days to get a brief ready and in three days to get a reply brief.

Presiding Examiner: What time do you require?

Mr. Ryan: I would need at least two weeks to get an [322] initial brief and an additional week to get a reply brief. That would still leave the Commission time to decide the matter.

Mr. Geneau: The staff also needs more than a week on the first brief.

Presiding Examiner: What about ten days on the first brief and a week on the second?

Mr. Kirby: I certainly think in view of the fact

that I stated to Your Honor that I was going to request to have this record remain open long enough to get this field study in, that obviously to put down a briefing matter in ten days or something like that is not going to give anybody time enough to make any sense with regard to it.

Presiding Examiner: I suggest this: That if the intermediate decision procedure is omitted that you include in your brief any motions you might have with respect to the subject matter of field prices.

Mr. Kirby: Perhaps that is the best way to handle it.

Presiding Examiner: It being understood that the other parties would be satisfied to respond to that in their reply brief.

I think the rules give them—what is it?—eight days for a motion?

Mr. Kirby: Ten days, I think.

Presiding Examiner: That is the only way I see that [323] you can handle it.

Just a minute.

Mr. Littman: It is ten days, unless the Examiner sets a lesser time.

Mr. Kirby: That is correct.

Mr. Littman: I assure your Honor we could reply in seven days.

Presiding Examiner: I think the time could be safely set to coincide with the date of filing of the reply brief.

Is there any objection to filing simultaneous briefs?

Mr. Ryan: I have no objection, Mr. Examiner.

Presiding Examiner: The Examiner hears none.

On the matter of days, the 14th of March for the initial brief and the 20th of March for the reply brief.

Mr. Ryan: I think that the very least we can expect in this case is two weeks for the initial brief and one week for the reply brief, and that still leaves the Commission with ten days in which to act and still meet the deadline.

Presiding Examiner: You are suggesting the 14th and the 21st?

Mr. Ryan: I am suggesting the 15th and the 22nd, the 15th being two weeks from today and the 22nd being three weeks from today.

Mr. Littman: That only leaves eight days, as I see it, [324] for the Commission to decide this case. That isn't reasonable.

Presiding Examiner: I don't think—

Mr. Ryan: It is going to take me more than that period of time to get this brief ready. I have other commitments, Mr. Examiner. I am just not going to be able to do it in that time.

I think we are being perfectly reasonable by only asking for two weeks.

Mr. Kirby: Mr. Littman well knows extensions are certainly in order when you start a case this close to what they call their deadline. We know that this isn't true at all, that that is an absolute deadline.

All kinds of things could happen in there. Cer-

tainly, they would get extensions of these contracts if they are so important.

Mr. Voight: I think Staff Counsel will bear me out, if your Honor please, that repeatedly since the first filing of these matters early last September, the applicants have urged that this matter be set down for trial. Of course, if we had been set down for trial, our ten o'clock scholar wouldn't have gotten in last week. But I think Mr. Geneau will bear me out that not less than a dozen times we have, on different occasions, both personally and by telephone, we have urged that these matters be set down for hearing.

[325] Is that not right, Staff Counsel?

Mr. Geneau: That is so, Mr. Voight. However, others—

Mr. Voight: It was not our fault that we were delayed this long in getting started.

Presiding Examiner: I think the dates should be the 14th and the 21st.

Mr. Foster: 14th and 21st?

Presiding Examiner: Yes.

Mr. Ryan: I just want the record to show that I don't agree that that is long enough time in which to file our briefs.

Presiding Examiner: Very well.

Mr. Kirby: I make that observation, too, Mr. Examiner. I want to be noted as stating we do not have enough time because we may have to apply to your Honor for an extension.

Mr. Littman: I know of a case which ran for over a year and the Commission allowed the parties

ten days in which to file briefs because there was a deadline.

Presiding Examiner: Just a minute.

Proposed corrections to the transcript should be submitted on or before March the 8th, and in filing those, they shall be accompanied in each instance by a certificate of service by proposing counsel, stating that they have been served on all other participants in this proceeding. Objections to the proposed corrections submitted on or [326] before March 12th. The briefs will be filed simultaneously, the main briefs as previously stated on the 14th and the reply briefs on the 21st of March.

Subsection C (ii) of Section 1.30 of the Rules has been covered, as the Examiner construes it, by the discussion with respect to the filing of briefs.

With respect to subdivision C IV, the Examiner inquires whether the parties reserve only their rights to apply to the Commission for re-hearing and to petition for judicial review of the Commission's decision or order as may be provided for by the statute under which the proceeding was initiated and conducted?

Mr. Woodfin: We do, your Honor.

Mr. Foster: That is likewise correct with respect to Atlantic and Cities Service.

Mr. Voight: On behalf of Continental, yes, sir.

Mr. Littman: Yes, your Honor. We go along with that.

Mr. Ryan: The same applies to us, Mr. Examiner.

Presiding Examiner: The answer is yes?

Mr. Kirby: Yes.

Mr. Geneau: Yes, Mr. Examiner.

Presiding Examiner: The Examiner hears no response to the contrary.

Is there anything further to come before this hearing?

(No response)

[327] Presiding Examiner: Apparently not.

The hearing is now concluded.

(Whereupon, at 4:25 o'clock p.m., the hearing in the above-entitled matter was concluded.)

Errata Transcript, Approved March 15, 1957

[328] ERRATA TRANSCRIPT

The transcript of hearing in the above-entitled matter held February 28 and March 1, 1957 is hereby corrected as follows:

CORRECTIONS BY
THE ATLANTIC REFINING COMPANY
and
CITIES SERVICE PRODUCTION COMPANY

Page	Line	Correction
6	23	Change "7825" to "725"
67	25	Change the first "to" to "of"
114	18	Change "C Keuier" to "C. T. Klein"
116	14	After "paid" insert "by Buyer to Seller under the contract as a payment equivalent"
221	20	Change "sources" to "sorts"
222	7	Place a single quotation mark before "just" and one after the comma following "reasonable"
[329] 222	8	Insert "it" before "suffices"
222	9	Place a comma before "without"
222	10	Delete both commas, and insert a comma before "that"

CORRECTIONS BY
TENNESSEE GAS TRANSMISSION COMPANY

35	8	Insert "it" after the word "that"
57	7	Change "reasible" to "feasible"
143	24	Insert "hundred billion" after the word "six"

Errata Transcript, Approved March 15, 1957

Page	Line	Correction
144	7	Change "1,600,000,000" to "1,600,000,000,000"
144	11	Change "1,600,000,000" to "1,600,000,000,000"
146	25	Insert "a" after the word "purely"
154	21	Change "is not" to "are"
158	15	Change "lises" to "lists"
276	19	Change "sonner" to "sooner"
277	23	Change "re-dombined" to "re-combined"
281	25	Change "do" to "deal"
295	10	Change "their" to "our"

CORRECTIONS BY
THE BROOKLYN UNION GAS COMPANY
and
LONG ISLAND LIGHTING COMPANY

180	9	Change "contiguous" to "co-extensive"
181	23	Change "if" to "as"
198	19	Mr. Russell did not ask the question starting on line 19 and ending on line 22 and is unable to state which other counsel did.

[330]

CORRECTIONS BY
PUBLIC SERVICE ELECTRIC & GAS COMPANY

234	22	After "construct" insert "the pipeline facilities to"
318	4	Add at end of line "into consideration."
319	15	Change "know the day," to "know today,"

Errata Transcript, Approved March 15, 1957

CORRECTIONS BY
LAKE SHORE PIPE LINE CO.

Page	Line	Correction
43	22	Change "billion" to "million"
197	11	Change "cycle" to "single"
198	19	Change "Mr. Russell" to "Mr. Ryan"

CORRECTIONS BY
NEW YORK PUBLIC SERVICE COMMISSION

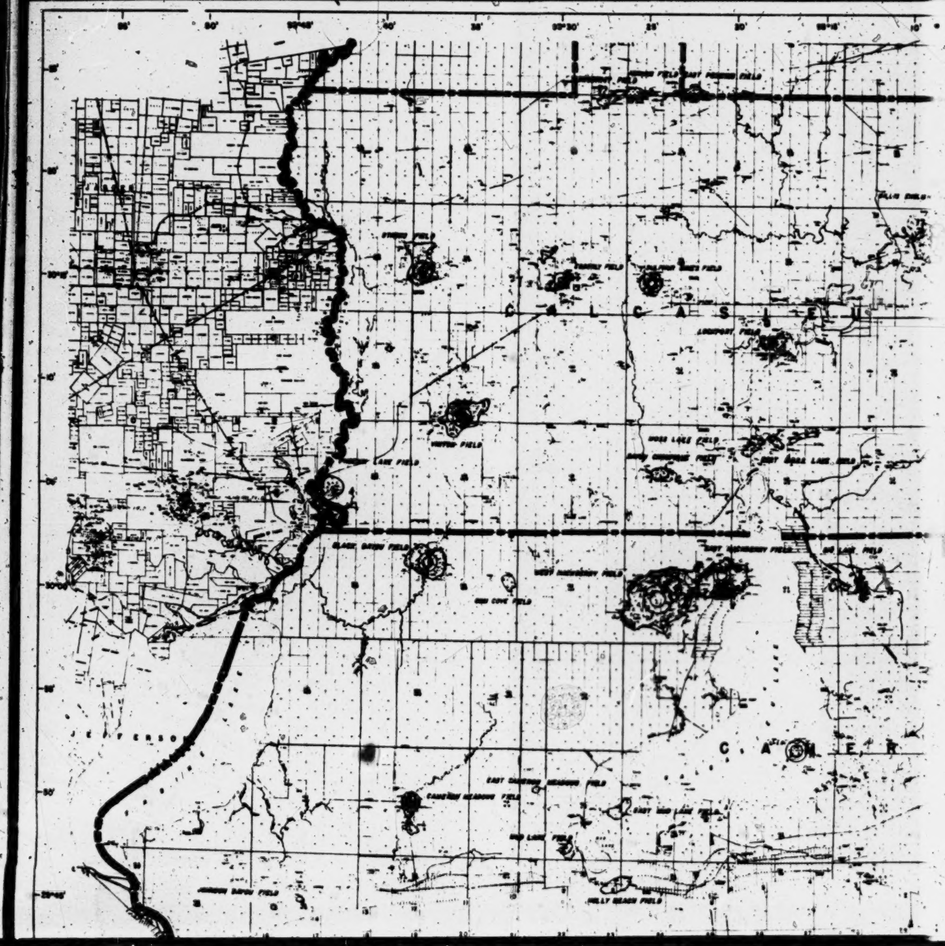
14	9	Change "long lines, pipeline" to "long line pipeline"
14	9	Change second comma to a period
14	10	Change "something" to "Something"
14	10	Change "wind" to "winds"
14	11-12	Change "consolidated" to "Consolidated"
15	2	Change "where, in" to "where. In"
15	8	Change "of" to "at"
86	9	Change "wuld" to "would"
89	19	Change "originall" to "originally"
142	24	Change "recess" to "request"
143	3	delete question mark
153	13	Change "Nowk" to "Now"
239	7	Change "underly" to "underlie"
[331] 239	8	Change "Transmission" to "Transmission's"
239	8	Change "gas, 1957" to "gas for 1957"
245	13	Change "4.73" to "12.71"
266	2	Change "tabs" to "tax"

Approved March 15, 1957

/s/ EWING G. SIMPSON
Presiding Examiner

• • •

Exhibit 1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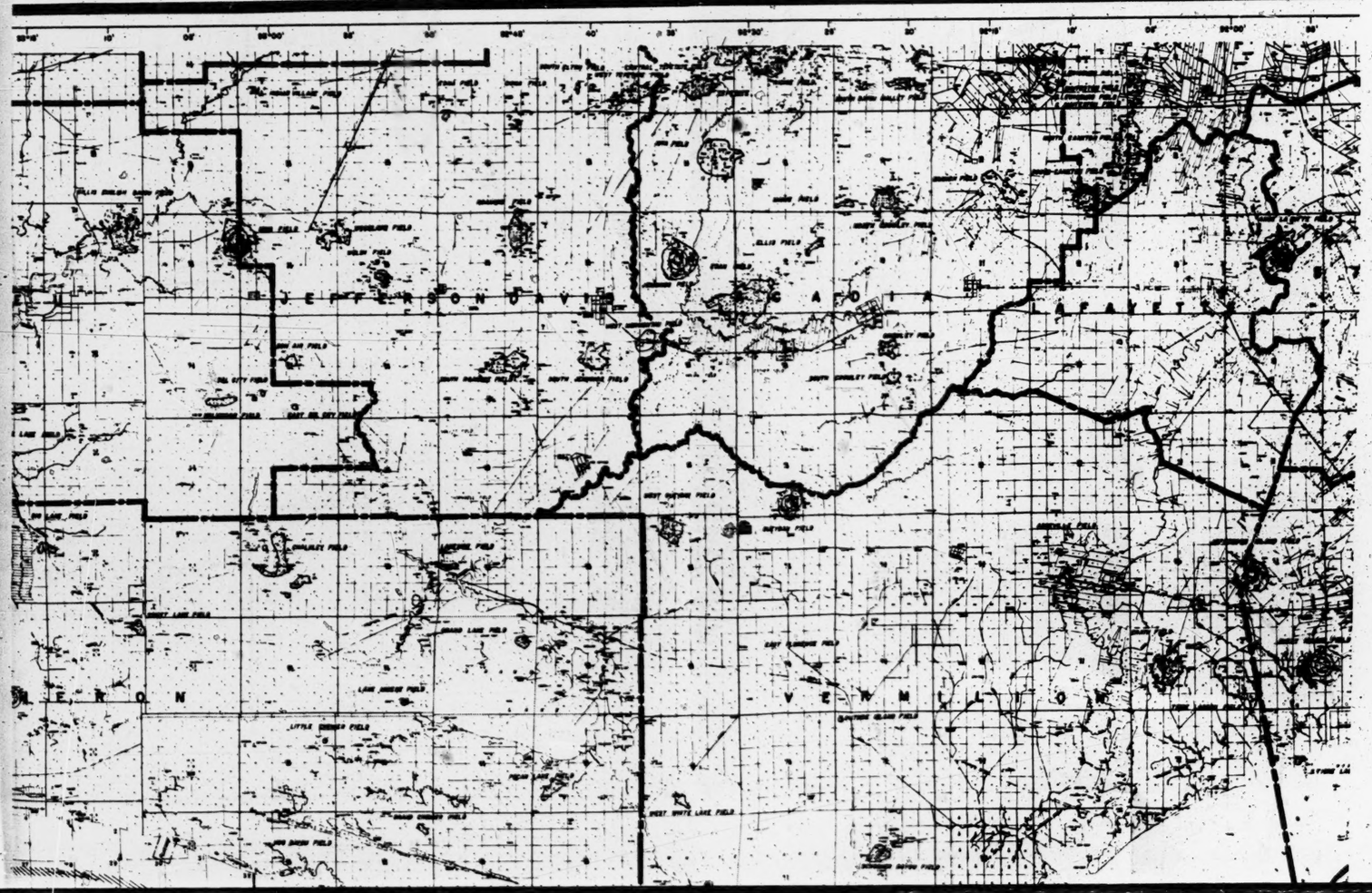
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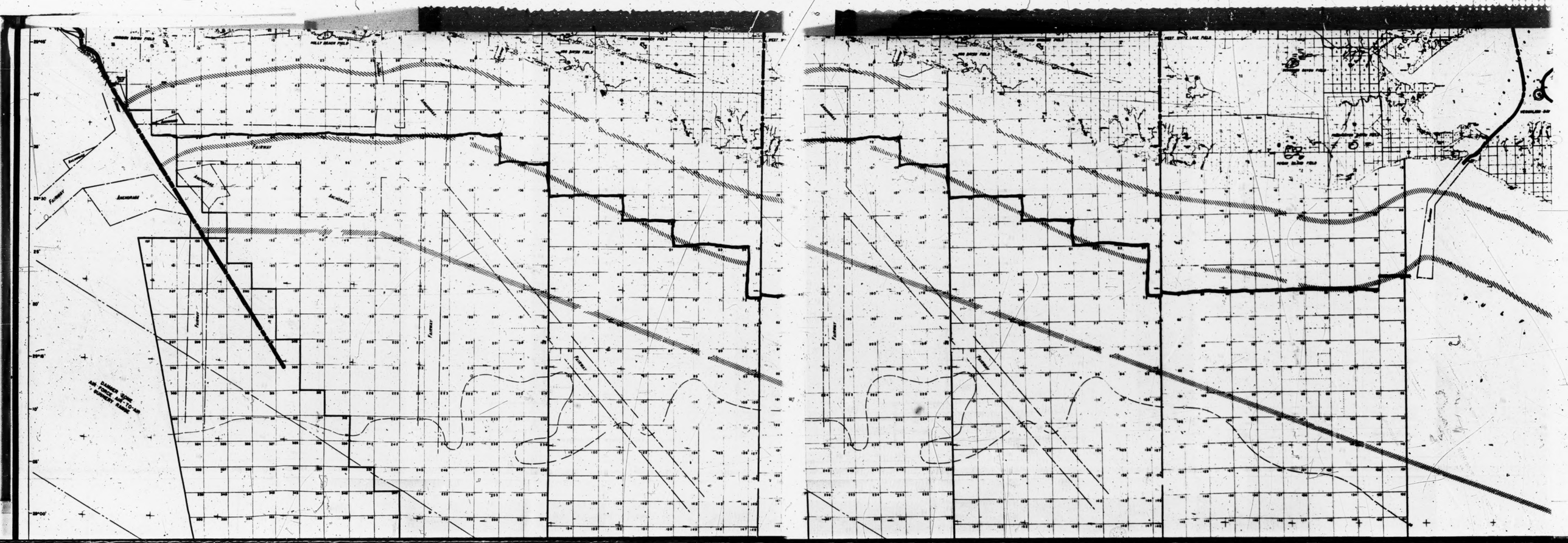
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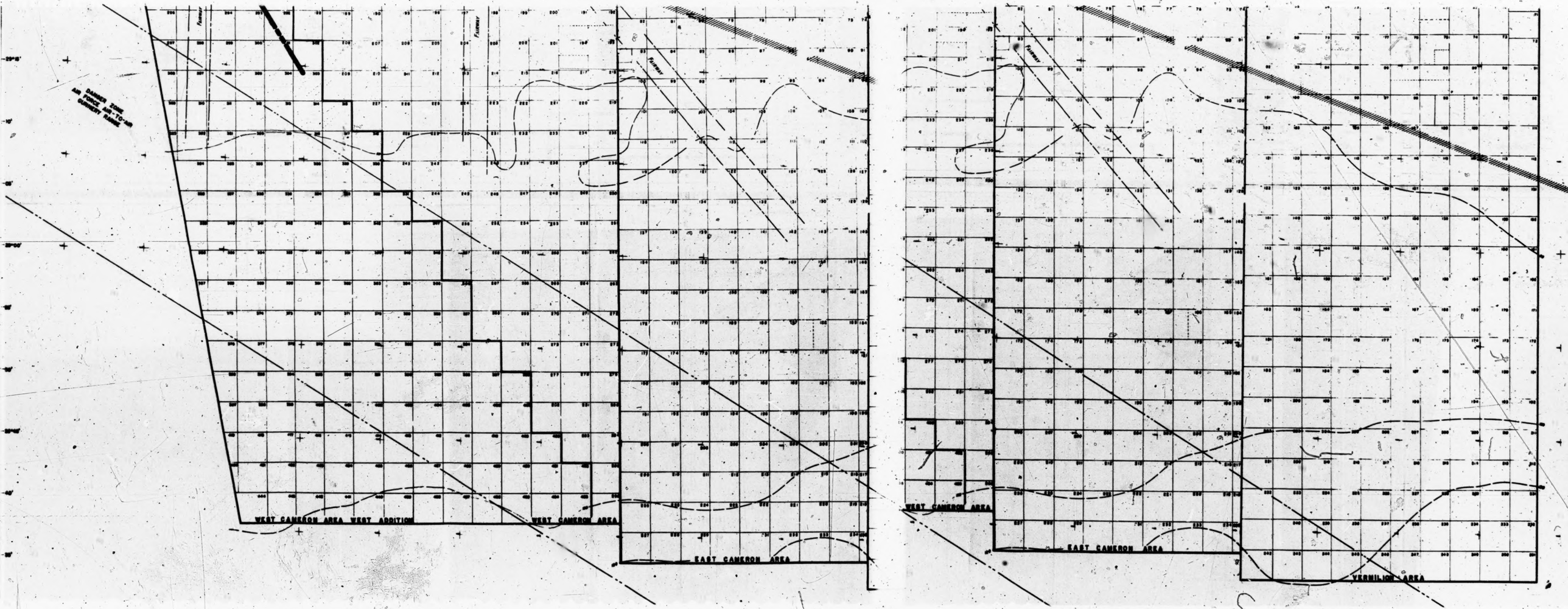
DANGER ZONE
AIR FORCE ARMY-NAVY
GUNNERY RANGE
Runway
Runway
Runway
WEST CAMERON AREA WEST ADDITION
WEST CAMERON AREA
EAST CAMERON AREA
WEST CAMERON AREA
EAST CAMERON AREA
VERMILION AREA

From Exhibit No. 2, Folder Entitled "In the Matter of Continental Oil Company, *et al.*, Docket Nos. G-11024, *et al.*, Gas Reserve Estimates":

TABLE, BLOCK 49 FIELD, EAST CAMERON AREA, CAMERON PARISH, LA., GAS RESERVE ESTIMATE

[334] ACREAGE DEDICATED TO THE TENNESSEE GAS TRANSMISSION COMPANY

NON-ASSOCIATED GAS

Line No.		Column 1	(2) Miocene	(3)
		L-1 (10,320')	M-1 (10,790')	Total
1.	Average depth	10,320	10,790	
2.	Depth to water contact (subsea)	10,344	10,800	
3.	Total dedicated acres	—	—	95,000.0
4.	Proven dedicated acres	640	640	
5.	Average pay thickness (feet)	10.0	10.0	
6.	Acre-feet (dedicated)	6,400	6,400	
7.	Porosity (%)	30	30	
8.	Connate water (%)	20	20	
9.	Reservoir temperature (°F)	222	228	
10.	Average initial reservoir pressure (PSIA)	4,813	7,128	
11.	Deviation factor for compressibility	.97	1.17	
12.	Gas in place MCF/ac. ft. at 14.65	2,702	3,290	
13.	Original gas in place MMCF at 14.65	17,293	21,056	38,349
14.	Recovery factor (%)	85	85	
15.	Original recoverable reserves MMCF at 14.65	14,699	17,898	32,597
16.	Cumulative production to 1/1/56 MMCF at 14.65	—	—	—
17.	Remaining recoverable reserves 1/1/56 MMCF at 14.65	14,699	17,898	32,597
18.	Number of wells	—	—	1
19.	Number of sand completions	—	—	1
20.	BTU content of gas	Above 1,000	Above 1,000	
21.	Gravity of gas	.76	.76	
22.	Remaining recoverable reserves 1/1/56 MMCF at 14.73	14,619	17,801	32,420

TABLE, BLOCK 62 FIELD, EAST CAMERON AREA, CAMERON PARISH, LA., GAS RESERVE ESTIMATE

[337] ACREAGE DEDICATED TO THE TENNESSEE GAS TRANSMISSION COMPANY

NON-ASSOCIATED GAS

Line No.	Column 1	(2)	(3)	(4)	(5)	(6)
			Miocene			
	D-3 (6,310')	D-4 (6,390')	F-1 (7,130')	F-2 (7,240')	F-3 (7,630')	Total
1. Average depth	6,310	6,390	7,130	7,240	7,630	
2. Depth to water contact (subsea)	6,340	6,410	7,185	7,280	7,700	
3. Total dedicated acres	—	—	—	—	—	95,000.0
4. Proven dedicated acres	1,226	671	1,360	610	1,334	
5. Average pay thickness (feet)	8.0	7.6	26.3	16.0	32.6	
6. Acre-feet (dedicated)	9,868	5,084	35,848	9,741	43,559	
7. Porosity (%)	30	30	30	30	30	
8. Connate water (%)	20	20	20	20	20	
9. Reservoir temperature (°F)	159	160	170	172	177	
10. Average initial reserve pressure (PSIA)	2,949	2,986	3,374	3,636	3,650	
11. Deviation factor for compressibility	.87	.87	.90	.91	.91	
12. Gas in place MCF/ac. ft. at 14.65	2,030	2,058	2,202	2,347	2,336	
13. Original gas in place MMCF at 14.65	20,032	10,462	78,937	22,862	101,754	234,047
14. Recovery factor (%)	85	85	85	85	85	
15. Original recoverable reserves MMCF at 14.65	17,027	8,893	67,097	19,433	86,491	198,941
16. Cumulative production to 1-1-56 MMCF at 14.65	—	—	—	—	—	—
17. Remaining recoverable reserves 1-1-56 MMCF at 14.65	17,027	8,893	67,097	19,433	86,491	198,941
18. Number of wells	—	—	—	—	—	2
19. Number of sand completions	—	—	1	1	2	4
20. BTU content of gas	Above 1,000	Above 1,000	Above 1,000	Above 1,000	Above 1,000	
21. Gravity of gas	.60	.60	.60	.60	.60	
22. Remaining recoverable reserves 1-1-56 MMCF at 14.73	16,935	8,845	66,733	19,327	86,021	197,861

283a

From Exhibit No. 2, Folder Entitled "In the Matter of Continental Oil Company, *et al.*, Docket Nos. G-11024, *et al.*, Gas Reserve Estimates":

TABLE, BLOCK 71 FIELD, EAST CAMERON AREA, CAMERON PARISH, LA., GAS RESERVE ESTIMATE

[343] ACREAGE DEDICATED TO THE TENNESSEE GAS TRANSMISSION COMPANY

NON-ASSOCIATED GAS

Line No.	Column 1	(2)	(3) Miocene	(4)	(5)
	G-1 (7,130')	H-1 (7,650')	I (8,090')	I-4 (8,440')	Total
1. Average depth	7,130	7,650	8,090	8,440	
2. Depth to water contact (subsea)	7,145	7,691	8,110	8,461	
3. Total dedicated acres	—	—	—	—	95,000.0
4. Proven dedicated acres	1,397	3,664	2,044	1,232	
5. Average pay thickness (feet)	10.0	20.2	14.4	4.4	
6. Acre-feet (dedicated)	13,970	74,013	29,434	5,421	
7. Porosity (%)	30	30	30	30	
8. Connate water (%)	20	20	20	20	
9. Reservoir temperature (°F)	174	181	187	192	
10. Average initial reservoir pressure (PSIA)	3,330	3,572	4,070	3,939	
11. Deviation factor for compressibility	.87	.89	.93	.92	
12. Gas in place MCF/ac. ft. at 14.65	2,237	2,324	2,512	2,439	
13. Original gas in place MMCF at 14.65	31,251	172,006	73,938	13,222	290,417
14. Recovery factor (%)	85	85	85	85	
15. Original recoverable reserves MMCF at 14.65	26,563	146,205	62,847	11,239	246,854
16. Cumulative production to 1-1-56 MMCF at 14.65	—	—	—	—	—
17. Remaining recoverable reserves 1-1-56 MMCF at 14.65	26,563	146,205	62,847	11,239	246,854
18. Number of wells	—	—	—	—	2
19. Number of sand completions	—.	1	1	—	2
20. BTU content of gas	Above 1,000	Above 1,000	Above 1,000	Above 1,000	
21. Gravity of gas	.65	.65	.65	.65	
22. Remaining recoverable reserves 1-1-56 MMCF at 14.73	26,419	145,411	62,506	11,178	245,514

2848

From Exhibit No. 2, Folder Entitled "In the Matter of Continental Oil Company, *et al.*, Docket Nos. G-11024, *et al.*, Gas Reserve Estimate":

TABLE, BLOCK 192 FIELD, WEST CAMERON AREA, CAMERON PARISH, LA., GAS RESERVE ESTIMATE

[348] ACREAGE DEDICATED TO THE TENNESSEE GAS TRANSMISSION COMPANY

NON-ASSOCIATED GAS

Line No.	Column 1	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)	(11)	(12)	(13)	(14)	(1
								Miocene							
	B-15 (4,900')	C-1 (5,200')	D-2 (5,900')		D-4 (5,800')	E-1 (6,150')		E-2 (6,200')	F-2 (6,600')	G-2 (7,250')	I (8,100')	I-2 (8,250')		J-3 (8,800')	L-1 (
			Seg. I	Seg. II		Seg. I	Seg. II					Seg. I	Seg. II		
1. Average depth	4,900	5,200	5,900	5,900	5,800	6,150	6,150	6,200	6,600	7,250	8,100	8,250	8,250	8,850	
2. Depth to water contact (subsea)	4,942	5,196	5,716	5,683	5,892	6,177	6,129	6,238	6,652	7,270	8,112	8,339	8,280	8,899	
3. Total dedicated acres	—	—	—	—	—	—	—	—	—	—	—	—	—	—	
4. Proven dedicated acres	1,831	983	894	2,084	2,629	1,116	1,719	640	1,825	1,012	1,578	2,953	1,549	2,722	
5. Average pay thickness (feet)	18.3	7.1	4.1	17.1	46.0	6.1	14.8	20.0	27.4	10.8	23.4	27.9	30.7	29.9	
6. Acre-feet (dedicated)	33,507	6,979	3,665	35,636	120,934	6,808	25,441	12,800	50,005	10,930	36,925	82,389	47,554	81,388	4
7. Porosity (%)	30	30	30	30	30	30	30	30	30	30	30	30	30	30	
8. Connate water (%)	20	20	20	20	20	20	20	20	20	20	20	20	20	20	
9. Reservoir temperature (°F)	128	136	143	143	147	148	148	149	153	161	171	174	174	180	
10. Average initial reservoir pressure (PSIA)	2,376	2,421	2,625	2,625	2,681	2,887	2,887	2,910	3,084	3,396	4,770	4,360	4,360	4,866	
11. Deviation factor for compressibility	.83	.84	.85	.85	.84	.85	.85	.85	.85	.88	.96	.92	.92	.96	
12. Gas in place MCF/ac. ft. at 14.65	1,804	1,791	1,898	1,898	1,950	2,072	2,072	2,090	2,201	2,307	2,925	2,777	2,777	2,936	
13. Original gas in place MMCF at 14.65	60,447	12,499	6,956	67,637	235,821	14,106	52,714	26,752	110,061	25,216	108,006	228,794	132,057	238,955	12
14. Recovery factor (%)	80	80	80	80	80	80	80	85	85	85	85	85	85	85	
15. Original recoverable reserves MMCF at 14.65	48,358	9,999	5,565	54,110	188,657	11,285	42,171	22,739	93,552	21,434	91,805	194,475	112,248	203,112	10
16. Cumulative production to 1-1-56 MMCF at 14.65	—	—	—	—	—	—	—	—	—	—	—	—	—	—	
17. Remaining recoverable reserves 1-1-56 MMCF at 14.65	48,358	9,999	5,565	54,110	188,657	11,285	42,171	22,739	93,552	21,434	91,805	194,475	112,248	203,112	10
18. Number of wells	—	—	—	—	—	—	—	—	—	—	—	—	—	—	
19. Number of sand completions	1	—	1	—	1	—	—	—	—	—	1	2	—	1	
20. BTU content of gas	Above 1,000	Above 1,000	Above 1,000	Above 1,000	Above 1,000	Above 1,000	Above 1,000	Above 1,000	Above 1,000	Above 1,000	Above 1,000	Above 1,000	Above 1,000	Above 1,000	Above
21. Gravity of gas	.60	.60	.60	.60	.62	.62	.62	.62	.62	.63	.68	.70	.70	.70	
22. Remaining recoverable reserves 1-1-56 MMCF at 14.73	48,095	9,945	5,535	53,816	187,633	11,224	41,942	22,616	93,044	21,318	91,306	193,419	111,638	202,009	1

* * * *

Folder Entitled "In the Matter
l Company, *et al.*, Docket Nos.
as Reserve Estimate":

D, WEST CAMERON AREA, CAMERON
GAS RESERVE ESTIMATE

E TENNESSEE GAS TRANSMISSION COMPANY

ASSOCIATED GAS

Column 1	(2)	(3)	(4)	(5)	(6)	(7)	(8) Miocene	(9)	(10)	(11)	(12)	(13)	(14)	(15)	(16)
B-15 (4,900')	C-1 (5,200')	D-2 (5,900')		D-4 (5,800')	E-1 (6,150')		E-2 (6,200')	F-2 (6,600')	G-2 (7,250')	I (8,100')	I-2 (8,250')		J-3 (8,800')	L-1 (9,500')	Total
		Seg. I	Seg. II		Seg. I	Seg. II					Seg. I	Seg. II			
4,900	5,200	5,900	5,900	5,800	6,150	6,150	6,200	6,600	7,250	8,100	8,250	8,250	8,850	9,500	
4,942	5,196	5,716	5,683	5,892	6,177	6,129	6,238	6,652	7,270	8,112	8,339	8,280	8,899	9,554	
—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	95,000.0
1,831	983	894	2,084	2,629	1,116	1,719	640	1,825	1,012	1,578	2,953	1,549	2,722	1,357	
18.3	7.1	4.1	17.1	46.0	6.1	14.8	20.0	27.4	10.8	23.4	27.9	30.7	29.9	30.1	
33,507	6,979	3,665	35,636	120,934	6,808	25,441	12,800	50,005	10,930	36,925	82,389	47,554	81,388	40,846	
30	30	30	30	30	30	30	30	30	30	30	30	30	30	30	
20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	
30	30	30	30	30	30	30	30	30	30	30	30	30	30	30	
20	20	20	20	20	20	20	20	20	20	20	20	20	20	20	
128	136	143	143	147	148	148	149	153	161	171	174	174	180	188	
2,376	2,421	2,625	2,625	2,681	2,887	2,887	2,910	3,084	3,396	4,770	4,360	4,360	4,866	5,190	
.83	.84	.85	.85	.84	.85	.85	.85	.85	.88	.96	.92	.92	.96	.98	
1,804	1,791	1,898	1,898	1,950	2,072	2,072	2,090	2,201	2,307	2,925	2,777	2,777	2,936	3,029	
60,447	12,499	6,956	67,637	235,821	14,106	52,714	26,752	110,061	25,216	108,006	228,794	132,057	238,955	123,723	1,443,744
80	80	80	80	80	80	80	85	85	85	85	85	85	85	85	
48,358	9,999	5,565	54,110	188,657	11,285	42,171	22,739	93,552	21,434	91,805	194,475	112,248	203,112	105,165	1,204,675
—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	
48,358	9,999	5,565	54,110	188,657	11,285	42,171	22,739	93,552	21,434	91,805	194,475	112,248	203,112	105,165	1,204,675
—	—	—	—	—	—	—	—	—	—	—	—	—	—	—	6
1	—	1	—	1	—	—	—	—	—	1	2	—	1	1	8
Above 1,000	Above 1,000	Above 1,000	Above 1,000	Above 1,000	Above 1,000	Above 1,000	Above 1,000	Above 1,000	Above 1,000	Above 1,000	Above 1,000	Above 1,000	Above 1,000	Above 1,000	—
.60	.60	.60	.60	.62	.62	.62	.62	.62	.63	.68	.70	.70	.70	.72	—
48,095	9,945	5,535	53,816	187,633	11,224	41,942	22,616	93,044	21,318	91,306	193,419	111,638	202,009	104,594	1,198,134

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Item No. A, Gas Purchase and Sales Agreement, Dated August 17, 1956, Between Tennessee Gas Transmission Company, as Buyer and Continental Oil Company, as Seller

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[489] GAS PURCHASE AND SALES AGREEMENT
EAST CAMERON, WEST CAMERON
AND VERMILION AREAS

AGREEMENT made and entered into this 17th day of August, 1956, by and between Tennessee Gas Transmission Company, a Delaware corporation, herein called "Buyer", and Continental Oil Company, a Delaware corporation, hereinafter referred to as "Seller".

WITNESSETH THAT:

Buyer and Seller, in consideration of the payment of One Dollar ($1.00), the receipt of which is hereby acknowledged, and the mutual agreements herein contained, hereby covenant and agree as follows:

1. *Definitions*—For the purposes of this contract the following definitions shall be applicable:

(a) The term "gas" shall include casinghead gas produced with crude oil, natural gas from gas wells, and residue gas resulting from processing either casinghead gas or gas well gas or both.

(b) The term "leases" shall mean the oil, gas and mineral leases described in Exhibit "A" attached hereto, and the lands covered thereby, in which Seller holds gas rights which are dedicated to this contract as provided in Section 4 hereof.

Item No. A, Gas Purchase and Sales Agreement, Dated August 17, 1956, Between Tennessee Gas Transmission Company, as Buyer and Continental Oil Company, as Seller

(c) The term "dedicated reserves" shall mean the gas reserves as limited by reservoirs or depths and maximum quantities herein, located in and under the leases, which are attributable to the interest of Seller therein.

(d) The phrase "recoverable gas originally in place" shall mean the gas in the dedicated reserves as of the date of initial delivery of gas hereunder which is recoverable from wells drilled on the leases, based upon knowledge concerning all dedicated reservoirs penetrated by such wells and conditions existing at the time of the particular determination or redetermination.

(e) A day shall begin at 8 o'clock A.M. on each calendar day and end at 8 o'clock A.M. on the following calendar day, and a month or year shall begin at 8 o'clock A.M. on the first calendar day of such period of time and end at 8 o'clock A.M. on the first calendar day following such period.

(f) The term "MCF" shall mean one thousand (1,000) cubic feet.

(g) The term "contract quantity" shall mean the quantity per day specified in Subsection (a) of Section 3, or Subsection (b) of Section 3 hereof.

2. *Certificates of Public Convenience and Necessity and Construction of Facilities:*

(a) Each of the parties hereto will file with the Federal Power Commission and other regulatory bodies having jurisdiction, necessary application, if any, for [490] cer-

Item No. A, Gas Purchase and Sales Agreement, Dated August 17, 1956, Between Tennessee Gas Transmission Company, as Buyer and Continental Oil Company, as Seller

tificates of public convenience and necessity satisfactory to the applicant without delay following the execution hereof. Such application, if any, will be prosecuted diligently to the end that, if issued, such certificates will be issued on or before April 1, 1957. In the event any of such applications are denied, or if satisfactory certificates have not been issued by April 1, 1957, either party hereto may, by written notice mailed to the other party hereto, terminate this contract in its entirety, and if either such party so terminates this contract, then the respective obligations of the parties to sell and buy gas hereunder shall be of no force and effect from the date of such termination.

(b) If such certificates are issued and neither party hereto has cancelled this contract as provided in Subsection (a) of this Section 2, Buyer will install, or cause to be installed and placed in operation, by November 1, 1957, the facilities necessary to receive deliveries of gas hereunder, and Seller will use due diligence to install and place in operation, or cause to be installed and placed in operation, the necessary facilities to be installed for delivery of gas hereunder at the delivery point or points hereinafter provided.

3. *Quantity:*

(a) Subject to the provisions of this contract, Seller agrees to sell and deliver to Buyer, and Buyer agrees to purchase and receive (or if available and not taken, Buyer agrees to pay for) the following quantities of gas

Item No. A, Gas Purchase and Sales Agreement, Dated August 17, 1956, Between Tennessee Gas Transmission Company, as Buyer and Continental Oil Company, as Seller

per day from the dedicated reserves, subject to reductions as provided in Subsections (b), (f) or (g) of this Section 3:

(i) From November 1, 1957, until November 1, 1958, a quantity equal to twenty-five per cent (25%) of the smaller of the two following quantities:

(1) One hundred seventy-five thousand (175,000) MCF per day, or;

(2) Four-fifths (4/5) of the total quantity which the wells are capable of producing when produced at their respective maximum efficient rates of flow; and

(ii) From November 1, 1958 and during the remainder of the term hereof, as such term may be extended hereby, a quantity equal to one thousand (1,000) MCF for each eight million (8,000,000) MCF of recoverable gas originally in place in the dedicated reserves.

(b) In the event Buyer is obligated to take natural gas from gas wells or residue gas resulting from processing gas well gas under the provisions of paragraph (ii) of Subsection (a) of this Section 3, or if the quantity of such gas may have been reduced by Seller under Subsection (f) of this Section 3, Buyer shall, during the calendar months of July, August and September of any year during the term hereof, have the right to reduce the quantity of such gas well gas or residue gas which Buyer is so obligated to take during such calendar months by as much as twenty-five per cent (25%).

Item No. A, Gas Purchase and Sales Agreement, Dated August 17, 1956, Between Tennessee Gas Transmission Company, as Buyer and Continental Oil Company, as Seller

(c) In the event Buyer exercises its right to reduce the volume of gas Buyer is obligated to purchase or pay for hereunder as provided in Subsection (b) of this Section 3, Buyer shall, during the nine (9) calendar months following the last month [491] during which such reduction is in effect, purchase or pay for, if available, at the then effective price, in addition to the volume of gas Buyer is obligated to take hereunder, the aggregate volume which Buyer was relieved of taking or would not take by reason of Buyer's exercising the right so to reduce the quantity of such gas during such three (3) calendar months.

(d) Subject to the provisions of Section 6 hereof, Buyer shall have the right to purchase, and Seller will install, maintain and operate the necessary delivery facilities and will deliver to Buyer such quantity of gas per day, in addition to the contract quantity, as Buyer may from day to day elect to purchase up to a total quantity (including the contract quantity) equal to the smallest of the following quantities:

(1) The total quantity which the wells are capable of producing when produced at their respective maximum efficient rates of flow; or

(2) The total quantity which the wells are capable of producing when produced at their respective allowable rates of flow under applicable orders, rules, regulations or laws; or

(3) The total quantity equal to one hundred twenty-five per cent (125%) of the contract quantity hereunder.

Item No. A, Gas Purchase and Sales Agreement, Dated August 17, 1956, Between Tennessee Gas Transmission Company, as Buyer and Continental Oil Company, as Seller

(e) The gas purchased hereunder shall be delivered and received as nearly as practicable at uniform hourly and daily rates of flow. However, if at any time during the term hereof the daily quantity to be delivered hereunder contains gas well gas or residue gas resulting from processing gas well gas, the daily quantity of gas actually delivered and taken may vary ten per cent (10%) above or below the quantity to be delivered hereunder, but in no event, however, shall the total quantity delivered and taken during the month vary more than five per cent (5%) above or below the total quantity which was to have been delivered hereunder for such month. Any deficit occurring by reason of such permitted variation shall, subject to each party's ability so to do, be adjusted in gas as soon as reasonably possible but not after twelve (12) months from the accrual of such deficit.

(f) If, after the date of initial delivery of gas hereunder, for any period of six (6) consecutive months for any reason other than force majeure, Buyer does not purchase hereunder, or pay for, within the time provided in this contract, if available, at least the total contract quantity (within the permitted variation provided by Subsection (e) of this Section 3) for such period, Seller may upon written notice to Buyer within the next following thirty (30) days, in addition to any other rights which Seller may have, reduce the contract quantity to the average daily quantity which Buyer purchased hereunder during such six (6) months period. If Seller does reduce the contract quantity, Seller may by like concurrent notice also reduce in the same proportion the additional quantity deliverable under

Item No. A, Gas Purchase and Sales Agreement, Dated August 17, 1956, Between Tennessee Gas Transmission Company, as Buyer and Continental Oil Company, as Seller

the foregoing Subsection (d) and the dedicated reserves; and, if requested by Seller, Buyer will deliver written acknowledgment to Seller that the gas reserves then dedicated hereto are released from such dedication to the extent of the same percentage thereof that the contract quantity is so reduced.

(g) If, after the date of initial delivery of gas hereunder, Seller fails, for any reason other than force majeure, to make available for delivery to Buyer hereunder for any period of six (6) consecutive months the total contract quantity (within the variation permitted by Subsection (e) of this Section 3) for such period, Buyer may, in [492] addition to any other rights which Buyer may have, reduce the contract quantity to the average daily quantity which Seller did make available during such six (6) months period.

(h) If the quantities of gas taken by Buyer hereunder during any semi-annual period after the date of initial delivery of gas hereunder have not permitted Seller to maintain ratable withdrawals from any reservoir subject hereto, (under existing applicable rules, regulations, orders or laws) with other operators withdrawing gas from the same reservoir and if Seller during such period or during the ensuing semi-annual period has been unable to adjust deliveries as between the reservoirs subject hereto within the total quantities of gas sold hereunder so as to maintain ratable withdrawals from any such reservoir and at the same time comply with the lease or leases underlain by such reservoir, Buyer will purchase and receive or will

Item No. A, Gas Purchase and Sales Agreement, Dated August 17, 1956, Between Tennessee Gas Transmission Company, as Buyer and Continental Oil Company, as Seller

pay for if available and not taken, during any semi-annual period following a period of twelve (12) months from and after the initial date of the first semi-annual period mentioned above that additional quantity of gas over and above the contract quantity for such period which will permit Seller to make up the deficiency in ratable withdrawals accruing during the first semi-annual period mentioned above.

(i) Seller may allocate the total quantities of gas to be purchased and received by Buyer hereunder between the several fields covered by this contract in such quantities as it so desires; provided, however, Seller will not allocate a quantity of gas to be received by Buyer from any field covered hereby, in excess of a quantity equal to one thousand one hundred sixty (1,160) MCF for each eight million (8,000,000) MCF of recoverable gas originally in place in the reservoir or reservoirs in any field from which such gas is produced, if allocation of a greater quantity thereto would cause Buyer to suffer undue hardship by reason of its obligations to protect other producers producing from the same reservoir from drainage or by reason of lack of capacity in Buyer's facilities serving such reservoir. Seller may also deliver gas to Buyer from acreage or gas reservoirs not dedicated to the performance of this contract so long as deliveries of such gas by Seller to Buyer do not affect the daily quantity of gas to be delivered to Buyer hereunder and Buyer is not required to install any facilities to accomplish receipt of deliveries of gas from such reservoirs, but such deliveries shall be applied to the quantity of gas Seller is obligated to deliver hereunder.

Item No. A, Gas Purchase and Sales Agreement, Dated August 17, 1956, Between Tennessee Gas Transmission Company, as Buyer and Continental Oil Company, as Seller

(j) Seller may deliver to Buyer from the gas reserves dedicated hereto quantities of gas in addition to quantities provided elsewhere herein, up to a maximum of twenty-five per cent (25%) of fifty thousand (50,000) MCF per day which quantities shall be delivered to Buyer under the terms of this contract, but shall be allocable to quantities which Seller is then prevented from delivering to Buyer from other gas reserves dedicated to Buyer by Seller located in fields in the West Delta Area, provided, however,

(1) The deliveries to Buyer by Seller of such additional quantities of gas shall not interfere with taking of gas by Buyer for the purpose of making up deficiencies in take accrued under the terms of this contract; and

(2) The deliveries to Buyer by Seller of such additional quantities of gas shall not cause Buyer to increase its takes from any other producer to protect such other producer from drainage; and

[493] (3) The deliveries to Buyer by Seller of such additional quantities of gas shall not cause Buyer to construct any additional facilities in order to handle such additional gas in Buyer's system.

4. *Dedication of Reserves:*

(a) Subject to the terms and provisions of this contract, Seller dedicates to the performance of this contract all gas produced from and attributable to the interest of Seller in the reservoirs listed in Exhibit "A" or down to the respective depth limitations set out therein in and under the corresponding leases and lands listed in such

Item No. A, Gas Purchase and Sales Agreement, Dated August 17, 1956, Between Tennessee Gas Transmission Company, as Buyer and Continental Oil Company, as Seller

Exhibit "A" hereto annexed and made a part hereof and Seller's leasehold or other estate in and under all such lands and leases as so limited to reservoirs or depth mentioned above up to a quantity equal to twenty-five per cent (25%) of two trillion (2,000,000,000,000) cubic feet.

(b) On or before August 1, 1957, Seller may dedicate gas reserves located in the East Cameron, West Cameron and Vermilion Areas, to the performance of this contract, in addition to the gas reserves contemplated by Subsection (a) of this Section 4, up to a quantity equal to twenty-five per cent (25%) of one trillion (1,000,000,000,000) cubic feet. In the event Seller so dedicates such additional gas reserves hereto, Buyer will be obligated hereunder to purchase or pay for gas produced therefrom, if available, commencing November 1, 1958; provided, however, in the event Buyer or Seller has not obtained all requisite certificates and authorities, if any, necessary to purchase and deliver such gas respectively, satisfactory to the party receiving the same by April 1, 1958, either Buyer or Seller may cancel such dedication of such additional gas reserves hereto by written notice to the other party delivered after April 1, 1958. If either party so cancels such dedication of gas reserves hereto, both parties hereto from the date of such cancellation shall be absolved and relieved of all obligations hereunder respecting such additional gas reserves.

(c) In the event Seller does not dedicate additional gas reserves to the performance of this contract in accordance

Item No. A, Gas Purchase and Sales Agreement, Dated August 17, 1956, Between Tennessee Gas Transmission Company, as Buyer and Continental Oil Company, as Seller

with the provisions of Subsection (b) of this Section 4, or if Seller does so dedicate such additional gas reserves hereto and such dedication is cancelled in accordance with the provisions of Subsection (b) of Section 4, Seller may, on or before August 1, 1958, dedicate gas reserves located in the East Cameron, West Cameron and Vermilion Areas, to the performance of this contract, in addition to the gas reserves contemplated by Subsection (a) of this Section 4, up to a quantity equal to twenty-five per cent (25%) of one trillion (1,000,000,000,000) cubic feet. In the event Seller so dedicates such additional gas reserves hereto, Buyer will be obligated hereunder to purchase or pay for gas produced therefrom, if available, commencing November 1, 1959; provided, however, in the event Buyer or Seller has not obtained all requisite certificates and authorities, if any, necessary to purchase and deliver such gas respectively, satisfactory to the party receiving the same by April 1, 1959, either Buyer or Seller may cancel such dedications of such additional gas reserves hereto by written notice to the other party delivered after April 1, 1959. If either party so cancels such dedication of gas reserves hereto, both parties hereto from the date of such cancellation shall be absolved and relieved of all obligations hereunder respecting such additional gas reserves.

(d) Seller may also dedicate gas reserves located in the East Cameron, West Cameron and Vermilion Areas, to the performance of this contract, in addition to those gas reserves contemplated by Subsection (a) of this Section 4 and those gas reserves [494] which Seller may dedicate by Subsection (b) or (c) of this Section 4. Seller may

Item No. A, Gas Purchase and Sales Agreement, Dated August 17, 1956, Between Tennessee Gas Transmission Company, as Buyer and Continental Oil Company, as Seller

so dedicate such additional gas reserves not more than once during each twelve (12) month period commencing August 1, 1958 and ending August 1, 1967, upon the following conditions:

(1) Each such additional dedication shall be limited to an amount equal to twenty-five per cent (25%) of four hundred billion (400,000,000,000) cubic feet.

(2) Seller shall notify Buyer prior to each August 1st. commencing August 1, 1958 and ending August 1, 1967, of the gas reserves Seller desires to so dedicate hereto, if any. Buyer will not be obligated to connect such additional gas reserves so dedicated hereto to Buyer's system prior to fifteen (15) months from and after the date August 1st, first following receipt by Buyer of such notice from Seller.

(3) To connect such additional gas reserves hereunder to Buyer's system, Buyer will not be obligated to construct and place in operation in excess of one mile of lateral gathering line for each ten billion (10,000,000,000) cubic feet of such additional gas reserves so dedicated hereto.

(4) The term of this agreement shall be so extended insofar as such additional gas reserves are concerned, to cover a period of time terminating twenty (20) years from and after the date of initial delivery of gas to Buyer from such additional gas reserves so dedicated hereto.

5. *Determination of Reserves:*

(a) On or before the date of initial delivery of gas hereunder, Buyer and Seller will endeavor to determine

Item No. A, Gas Purchase and Sales Agreement, Dated August 17, 1956, Between Tennessee Gas Transmission Company, as Buyer and Continental Oil Company, as Seller

by agreement the total quantity of recoverable gas in place dedicated hereto as of the date of initial delivery hereunder. From time to time after the first such determination, but not more often than once in any twelve (12) month period, upon written request of either Buyer or Seller to the other, Buyer and Seller will endeavor promptly to redetermine by agreement the total quantity of recoverable gas originally in place in reservoirs then dedicated.

(b) If the first determination of quantity of recoverable gas originally in place or any subsequent determination or redetermination is not made within sixty (60) days after written request therefor, then the first determination or such subsequent determination or redetermination shall be made by arbitration upon written demand by Buyer or Seller.

(c) The latest determination or redetermination of the total quantity of recoverable gas originally in place, fixed at the nearest one thousand (1,000) MCF, shall be controlling for all purposes of Subsection (a) or (b) of Section 3 hereof until the next redetermination is made.

6. *Reservations of Seller*—Seller reserves the following rights:

(a) To operate its property free from any control by Buyer in such a manner as Seller, in its sole discretion, may deem advisable, including without limitation, the right to determine when, where or whether to drill new wells, to repair and rework old wells, and to abandon any

Item No. A, Gas Purchase and Sales Agreement, Dated August 17, 1956, Between Tennessee Gas Transmission Company, as Buyer and Continental Oil Company, as Seller

well or surrender any lease when no longer deemed by Seller to be capable of producing gas in paying quantities under normal methods of [495] operation; provided, however, in the event Seller should terminate or surrender any lease described in Exhibit "A" hereto, written notice of same shall be given to Buyer within thirty (30) days;

(b) In addition to mechanical or low temperature separation, to process the gas, or have same processed for the recovery of liquefiable hydrocarbons including the methane-ethane stream; provided, however, that such processing will not, including shrinkage and fuel, remove more than ten per cent (10%) of the volume of gas produced and delivered by Seller to Buyer daily hereunder; and provided further, that such processing will not render the gas incapable of meeting the quality specifications contained herein. Seller may so process the gas or have same so processed before delivery to Buyer, or after delivery to Buyer at a mutually agreeable point in Cameron or Vermilion Parishes or South of U. S. Highway No. 90 in Jefferson Davis or Calcasieu Parishes, Louisiana, on Buyer's lateral line serving the dedicated reserves, but before the gas is commingled with other gas delivered to Buyer by other producers producing such other gas from leases not dedicated hereto. Seller may also process the gas or cause same to be processed on Buyer's line at such mutually agreeable point after commingling with other gas provided arrangements can be mutually agreed upon as between the parties hereto and any other producers who deliver gas to Buyer upstream from the facilities used for such processing;

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(c) In the event Seller elects to separate by mechanica or low temperature means or to process the gas afte delivery to Buyer as provided in Subsection (b) of th Section 6, even though the gas has been separated on o processed before delivery to Buyer, Seller will deliver th gas hereunder to Buyer at the offshore delivery point provided herein and Buyer shall accept, along with the ga so delivered at such points, delivery of the liquefiab hydrocarbons produced with such gas which Seller wi remove, or cause to be removed, from such gas at the loca tion provided in Subsection (b) of this Section 6, and tit to such liquefiable hydrocarbons to be so removed from th gas by Seller shall be retained by Seller. No charge sha be made by Buyer for transporting such liquefiable hydr carbons combined with the gas delivered to Buyer at th offshore delivery points by Seller, from such deliver points to the separation or processing facilities to be con structed, or caused to be constructed, by Seller, except tha Buyer shall be reimbursed in full by Seller for any taxe or other assessment or charge, present or future, levie and assessed against and paid by Buyer for such liquefiab hydrocarbons by reason of the service performed by Buye in receiving, transporting or delivering such liquefiab hydrocarbons to said facilities, or otherwise in respect o such liquefiable hydrocarbons which in any way increase the obligations or amounts payable by Buyer under Sectio 10 hereof.

Buyer will indemnify and save Seller harmless from a loss, damage and expense which may be asserted by reas of accidents or occurrences resulting from Buyer's opera

Item No. A, Gas Purchase and Sales Agreement, Dated August 17, 1956, Between Tennessee Gas Transmission Company, as Buyer and Continental Oil Company, as Seller

tions in transporting liquefiable hydrocarbons from such delivery points to such separation or processing facilities, but Buyer shall not be responsible to Seller for loss of liquefiable hydrocarbons in transit except losses which may result from negligence on the part of Buyer in maintaining and operating Buyer's gathering and lateral line or lines serving the gas to be delivered hereunder.

Seller agrees to indemnify and save Buyer harmless from all loss, damage and expense which may be asserted by reason of accidents or occurrences resulting from Seller's operation in processing the gas delivered through said separation or processing facilities.

[496] (d) To use gas produced from the leases for developing and operating Seller's leases listed in Exhibit "A" and Seller's other leases in the immediate vicinity, for the operation of Seller's pipe lines, water stations, camps, platform installations and other miscellaneous uses incident to the operation of such leases, and to fulfill obligations to the Lessor therein;

(e) To unitize any of its leases with other properties of Seller and of others in the same field, in which event this contract will cover Seller's interest in the unit which is attributable to the gas reserves dedicated hereto;

(f) To use gas produced from the leases in any particular field covered hereby for repressuring, pressure maintenance or cycling operations for the leases listed in Exhibit "A"; provided, however, if as a result of such use, Seller is thereby rendered unable to deliver to Buyer the then applicable daily contract quantity hereunder, the

term of the contract shall be extended beyond its primary term, until Buyer has thereafter had the opportunity to purchase from Seller at the then applicable contract rate and price, and in accordance with the other terms hereof, a quantity of gas equal to the accumulated deficiencies not delivered by Seller which has occurred by reason of Seller's election under this Subsection (f).

7. *Quality of Gas*—Seller agrees that the gas delivered hereunder will be merchantable gas and will upon delivery

(a) Have a total heating value of not less than one thousand (1,000) British thermal units per cubic foot; however, should the total heating value of the gas fall below one thousand (1,000) British thermal units per cubic foot during any month, Buyer at Buyer's sole discretion may refuse to accept delivery thereof, or may accept delivery thereof and reduce the total amount payable as the purchase price for gas delivered under this agreement for each month during which such condition obtains by an amount determined by multiplying such total amount by a fraction having as its numerator the deficiency of British thermal units below one thousand (1,000) and as its denominator one thousand (1,000);

(b) Except as provided in Subsection (c) of Section 6, be commercially free from dust, water and any other substance that might become separated from the gas in Buyer's pipe lines; and Seller will furnish, install, maintain and operate such drips, separators, heaters and other mechanical devices as may be necessary to effect compliance with such requirements;

Item No. A, Gas Purchase and Sales Agreement, Dated August 17, 1948, Between Tennessee Gas Transmission Company, as Buyer and Continental Oil Company, as Seller

(c) Not contain more than twenty (20) grains of total sulphur, nor more than one (1) grain of hydrogen sulphide, per one hundred (100) cubic feet;

(d) Have a temperature of not more than one hundred forty degrees (140°) Fahrenheit; and

(e) Have been dehydrated by Seller for removal of entrained water present therein in a vapor state, and in no event contain more than seven (7) pounds of entrained water per million cubic feet, at a pressure base of fourteen and seven-tenths (14.7) pounds per square inch and a temperature of sixty degrees (60°) Fahrenheit as determined by dew-point apparatus approved by the Bureau of Mines.

(f) As to gas which cannot meet the specifications set out in (c) and (d) above, Buyer shall have the option to:

[497] (1) Refuse to accept delivery of such gas, in the event Seller cannot correct such deficiency within a reasonable time, in which event the contract will terminate as to such gas; or,

(2) Accept such gas at a reduced price, which price reduction is to be mutually agreed upon by the parties hereto.

8. *Delivery Pressure and Point of Delivery*:

(a) Seller shall make deliveries of gas hereunder to Buyer at a pressure sufficient to enter Buyer's facilities, but in no event shall such required pressure exceed one thousand (1,000) pounds per square inch gauge.

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(b) The points of delivery for all gas delivered to Buyer hereunder shall be at a valve on the discharge side of Seller's meter, to be located on each of the platforms erected and designated by Seller on a lease or leases listed in Exhibit "A" hereto as such Exhibit may be amended from time to time, and at such other points as may be mutually agreeable to the parties hereto.

(c) Seller shall not be obligated to install or operate compression facilities in order to deliver gas to Buyer hereunder, but Seller may do so at Seller's option. Buyer shall not be obligated to install or operate compression facilities in order to receive gas hereunder, but may do so at Buyer's option; provided, however, if during the term hereof, the flowing pressures of the gas wells then delivering gas to Buyer hereunder from any of the Areas A, B, C or D, as such Areas are described below, decline to such an extent that the contract quantity applicable to the dedicated reserves in the Area affected by such decline cannot be produced and delivered to Buyer against the operating pressure in Buyer's system serving such Area so affected, Buyer will reduce Buyer's operating pressure sufficiently to allow Seller to make available to Buyer from the Area so affected the contract quantity applicable to the dedicated reserves in the Area so affected, but in no event shall Buyer be obligated to reduce any operating pressure at any delivery point provided herein to a pressure below seven hundred (700) pounds per square inch gauge.

As used in this Subsection (c) of this Section 8, the terms Area A, Area B, Area C and Area D shall have the following meanings:

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Area A shall mean the acreage contained in Blocks 193, the South ½ of 192, the South ½ of 191, and the North ½ of 194, all situated in the West Cameron Area and the Northwest ¼ of Block 83, situated in the East Cameron Area.

Area B shall mean the acreage contained in Blocks 49, 50, 51, 62, 63 and 67, all situated in the East Cameron Area.

Area C shall mean the acreage contained in Blocks 58, 59, 70, 71 and 72, all situated in the East Cameron Area.

Area D shall mean the acreage contained in Blocks 86, 96, 108, the West ½ of 95, the South ½ of 87, the North ½ of 78 and the North ½ and Southwest ¼ of 75, all situated in the Vermilion Area.

[498] 9. *Measurement and Tests*—The measurement and tests for quality of gas delivered hereunder shall be governed by the following:

(a) The volumes shall be measured by orifice meters installed and operated, and computations made, as prescribed in Gas Measurement Committee Report No. 3 dated April, 1955, of the American Gas Association, as such report may be amended or revised from time to time.

(b) The unit of volume for purposes of measurement shall be one (1) cubic foot of gas at a temperature base of sixty degrees (60°) Fahrenheit and at a pressure base

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of fifteen and twenty-five thousandths (15.025) pounds per square inch absolute.

(c) The arithmetical average of the hourly temperature recorded during each day, the factor for specific gravity according to the latest test therefor, and the corrections for deviation from Boyle's Law applicable during each day shall be used to make proper computations of volumes hereunder. Chart integration and volume computations shall be made by Seller as accurately as possible and within the accuracy prescribed by the manufacturer of the computing equipment used.

(d) Temperature shall be determined by a recording thermometer continuously used and installed so as to record properly the temperature of the gas flowing through the meter.

(e) Specific gravity shall be determined with accuracy to nearest one thousandth by taking samples of the gas at the delivery point or points at such times as may be designated by Buyer, but not more often than once each month, and having the specific gravity determined by the use of the Acme gravity balance, or any other instrument mutually agreeable and acceptable to the industry.

(f) Deviation from Boyle's Law at the pressures, specific gravity and temperatures upon delivery shall be determined by joint test at intervals of three (3) months or as often as found necessary. The apparatus and method recommended by the National Bureau of Standards, or as otherwise mutually agreed upon, shall be used in making such tests. Each test shall determine the

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corrections to be used in computing volumes until the next test is made.

(g) The total heat value of the gas shall be determined by joint tests made by taking samples of the gas at the delivery point or points at such times as may be designated by Buyer, but not more often than once each month, and having the British thermal unit content per cubic foot determined by calorimeter test. The British thermal unit content per cubic foot shall be determined by an accepted type of recording calorimeter for a cubic foot of gas at a temperature of sixty degrees (60°) Fahrenheit when saturated with water vapor and at an absolute pressure equivalent to thirty inches (30″) of mercury at thirty-two degrees (32°) Fahrenheit.

(h) Tests to determine sulphur and hydrogen sulphide content shall be made by approved standard methods in general use by the gas industry, and the water vapor content shall be determined by use of dew-point apparatus approved by the Bureau of Mines.

(i) All measuring and testing equipment, housing, devices, and materials shall be of standard manufacture and type approved by Buyer, and shall, with all related [499] equipment, appliances and buildings be installed, maintained and operated, or furnished by Seller, at Seller's expense, and the size, type and specifications of the foregoing must be approved by Buyer before same is fabricated and installed at the delivery point. Buyer's approval shall not be unreasonably withheld. Buyer may install and operate check measuring and testing equip-

ment which shall not interfere with the use of Seller's equipment.

(j) The accuracy of Seller's measuring and testing equipment shall be verified at least once each month and at other times upon request of Buyer or Seller. Tests for quality of the gas may be made at the time of testing equipment or at other times, but not more often than once each month. Notice of the time and nature of each test shall be given by Seller to Buyer sufficiently in advance to permit convenient arrangement for Buyer's representative to be present. Measuring and testing equipment shall be tested by means and methods approved by Buyer (which approval shall not be unreasonably withheld). Tests and adjustments shall be made in the presence of and observed by representatives of both Buyer and Seller, if present. If, after proper notice, Buyer fails to have a representative present, the results of the tests shall nevertheless be considered accurate until the next tests are made. All tests shall be made at Seller's expense, except that Buyer shall bear the expense of tests made at its request if the inaccuracy found is two per cent (2%) or less.

(k) If at any time any of the measuring or testing equipment is found to be out of service, or registering inaccurately in any percentage, it shall be adjusted at once to read accurately, within the limits prescribed by the manufacturer. If such equipment is out of service, or inaccurate by an amount exceeding two per cent (2%) at a reading corresponding to the average rate of flow

for the period since the last preceding test, the previous readings of such equipment shall be disregarded for any period definitely known or agreed upon, or if not so known or agreed upon, for a period of sixteen (16) days or one-half of the elapsed time since the last test, whichever is shorter. The volume of gas delivered during such period shall be estimated by (a) using the data recorded by any check measuring equipment if installed and accurately registering, or if not installed or registering accurately, (b) by correcting the error if the percentage of error is ascertainable by calibration, test or mathematical calculation, or, if neither such method is feasible, (c) by estimating the quantity, or quality, delivered, based upon deliveries under similar conditions during a period when the equipment was registering accurately. No correction shall be made for recorded inaccuracies of two per cent (2%) or less.

(l) Buyer and Seller shall have the right to inspect equipment installed or furnished by the other, and the charts and other measurement or testing data of the other, at all times during business hours; but the reading, calibration and adjustment of such equipment and changing of charts shall be done only by the party installing and furnishing the same. Each party shall preserve all original test data, charts and other similar records, in such party's possession, for a period of at least three (3) years.

(m) Seller shall at its expense, furnish Buyer necessary data daily as required for calculating average hourly

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volumes delivered during the preceding twenty-four (24) hour period.

10. *Prices*—The prices to be paid by Buyer to Seller for all gas delivered to or, if available and not taken by Buyer, to be paid for hereunder, shall be as follows:

[500]

From the date of initial delivery or November 1, 1957, whichever occurs first, until November 1, 1962	21.4 Cents per MCF
From November 1, 1962 to November 1, 1966	23.4 Cents per MCF
From November 1, 1966 to November 1, 1970	25.4 Cents per MCF
From November 1, 1970 to November 1, 1974	27.4 Cents per MCF
From November 1, 1974 to November 1, 1978 or to the date of expiration of this contract, whichever is earlier	29.4 Cents per MCF

In the event the term of this contract is continued or extended hereunder beyond November 1, 1978:

From November 1, 1978 to November 1, 1982	31.4 Cents per MCF
From November 1, 1982 to November 1, 1986	33.4 Cents per MCF
From November 1, 1986 to expiration of this contract	35.4 Cents per MCF

Seller shall pay all Federal and State of Louisiana production, severance, or similar taxes now being levied

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in respect of or applicable to the gas delivered hereunder; provided, however, that if any such taxes in addition to or greater than those being levied at the date hereof are hereafter levied and Seller is liable for the payment or collection of such additional or greater tax, so long as such additional or greater tax is in effect and paid by Seller on such gas, Buyer will reimburse Seller for three-fourths (¾) of the amount by which such additional or greater tax shall exceed the taxes now levied.

Buyer shall reimburse Seller the amounts for which Seller is liable and pays to the State of Louisiana or Federal Government applicable or equivalent to the gathering tax imposed by Act No. 11, Louisiana Laws of 1948, as amended by Act No. 45, Louisiana Laws of 1954, in respect of or applicable to gas delivered hereunder and Buyer will pay or reimburse Seller any and all similar taxes hereafter levied or assessed by Federal or State of Louisiana Laws in respect of or applicable to such gas imposed upon or payable by Seller; provided, however, that during any time when the amount of such taxes is in excess of the amount of tax levied by said Act No. 11, Louisiana Laws of 1948, Buyer shall be obligated hereunder to pay or reimburse Seller only three-fourths (¾) of such excess. The amount for which reimbursement is to be made by Buyer to Seller under this paragraph shall be billed quarterly.

Notwithstanding any provision of this contract to the contrary, if, in order to comply with or by reason of any present or future law or rule, regulation or order of [501] the Secretary of the Interior, the Commissioner of Conservation of the State of Louisiana, or other govern-

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mental officials or bodies having jurisdiction, the basis or method of measurement of gas delivered hereunder is changed, then the price per MCF for gas purchased hereunder shall be adjusted to compensate for the change in the basis or method of measurement, to the end that the total amount of money payable for volumes of gas purchased according to the measurement provisions set forth herein shall remain unaffected by such change of basis or method of measurement.

11. *Billings and Payments:*

(a) On or before the 15th day of each month after deliveries of gas are commenced Seller shall render Buyer a statement for the preceding month showing the volume of gas delivered hereunder, or the volume Buyer was obligated to take or pay for hereunder, the amount due therefor and information sufficient to explain and support any adjustments in volumes made by Seller in determining the amount billed.

(b) Buyer will pay Seller at the address as shown in Section 17 hereof, on or before the 25th day of each month, or as to statements rendered after the 15th, within ten (10) days after receipt of such statements, for gas which Buyer was obligated to take but did not take, and for gas delivered during the preceding month, according to the measurements, computations and prices herein provided. If the correct amount is not paid when due, interest on any unpaid amount shall accrue at the rate of six per cent (6%) per annum. If such default continues after sixty (60) days after written notice from Seller to Buyer, Seller

may suspend gas deliveries hereunder without prejudice to other remedies.

(c) If any overcharge or undercharge in any form whatsoever shall be found within two (2) years and the bill therefor has been paid, Seller shall refund the amount of the overcharge received by Seller and Buyer shall pay the amount of the undercharge with thirty (30) days after final determination thereof.

(d) If for any month Buyer pays for gas not received Buyer may credit such payment against payments due hereunder at time of actual delivery for quantities taken in excess of the contract quantity for any month or months within twelve (12) months after such payment is made for gas not received.

12. *Warranty of Title to Gas*—Seller warrants title to all gas delivered hereunder by it, that it has the right to sell the same, and that such gas is free from liens and adverse claims of every kind. Seller will pay or cause to be paid, all royalties, taxes and other sums due on production, gathering or handling of the gas delivered by such Seller. Seller will indemnify and save Buyer harmless against all loss, damage and expense of every character on account of adverse claims to the gas delivered by it or of royalties, taxes, payments or other charges thereon applicable before or upon delivery to Buyer.

13. *Force Majeure*—If either Buyer or Seller is rendered unable, wholly or in part, by force majeure or any other cause of any kind not reasonably within its control to perform or comply with any obligation or condi-

tion of this contract, upon giving notice and reasonably full particulars to the other party or parties such obligation or condition shall be suspended during the continuance of the inability so caused and such party shall be relieved of liability and shall suffer no prejudice for failure to perform the same during such period; provided obligations to make payments then due [502] hereunder shall not be suspended and the cause of suspension (other than strikes or lockouts) shall be remedied so far as possible with reasonable dispatch. Settlement of strikes and lockouts shall be wholly within the discretion of the party having the difficulty. The term "force majeure" shall include, without limitation by the following enumeration, acts of God and the public enemy, the elements, fire, accidents, breakdowns, strikes and any other industrial, civil or public disturbance, inability to obtain materials, supplies, permits or labor, any act or omission (including failure to take gas) of a purchaser of gas from Buyer which is excused by any event or occurrence of the character herein defined as constituting force majeure, temporary failure of gas supply, and any laws, orders, rules, regulations, act or restraints of any government or governmental body or authority, civil or military.

14. *Regulatory Bodies*—This contract shall be subject to all valid applicable State and Federal Laws, and orders, directives, rules and regulations of any governmental body or official having jurisdiction.

15. *Arbitration*—Any controversy, except those involving legal questions, between the parties arising under this

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contract not resolved by agreement shall be determined by a board of arbitration upon notice of submission given either by Buyer or Seller, which request shall also name one arbitrator. The party receiving such notice shall, within ten (10) days thereafter, by notice to the other, name the second arbitrator, or failing so to do, the party giving notice of submission shall name the second. The two (2) arbitrators so appointed shall name the third, or failing so to do within ten (10) days, the third arbitrator may be appointed by the person who is at the time the senior (in service) judge of the United States District Court for the Western District of Louisiana.

The arbitrators selected to act hereunder shall be qualified by education, experience, and training to pass upon the particular question in dispute. Therefore, it is agreed that if an engineering question is involved, qualified engineers shall be appointed, and similar procedure will be followed in connection with other questions.

The arbitrators so appointed shall promptly hear and determine (after giving the parties due notice of hearing and a reasonable opportunity to be heard) the questions submitted, and shall render their decision within sixty (60) days after appointment of the third arbitrator. If within said period a decision is not rendered by the board or a majority thereof, new arbitrators may be named and shall act hereunder at the election of either Buyer or Seller in like manner as if none had been previously named.

The decision of the arbitrators, or of a majority thereof, made in writing shall be final and binding upon the parties hereto as to the questions submitted and the parties will

abide by and comply with such decision. The expenses of arbitration, including reasonable compensation to the arbitrators, shall be borne equally by Buyer and Seller, except that each such party shall bear the compensation and expenses of its counsel, witnesses and employees.

16. *Term of Contract*—Subject to the other provisions of this agreement, this contract shall be in force from its date for a term expiring November 1, 1977, and from year to year thereafter until terminated by either party upon six (6) months' written notice delivered prior to any following anniversary date, or as such term may be otherwise extended hereunder.

[503] 17. *Miscellaneous:*

(a) No waiver by Buyer or Seller of any default of the other under this contract shall operate as a waiver of any future default, whether of like or different character.

(b) This agreement shall bind and inure to the respective successors and assign of the parties hereto; but no assignment shall relieve either party's obligations hereunder without the written consent of the other party or parties.

(c) Every notice, request, statement or bill provided for in this contract shall be in writing directed to the party to whom given, made, or delivered at such party's address as follows:

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Buyer: Tennessee Gas Transmission Company
Commerce Building
Houston, Texas

Seller: Continental Oil Company
P. O. Box 2197
Houston, Texas

or at such other post office address as such party shall from time to time designate as the address for such purpose by registered letter addressed to the other party or parties.

IN WITNESS WHEREOF, this instrument is executed in two (2) counterparts, each of which shall be an original, as of the date first above mentioned.

TENNESSEE GAS TRANSMISSION COMPANY

By WM. W. WITMER
Vice President

[SEAL] BUYER

ATTEST:

B. J. WILLIAMSON
Assistant Secretary

CONTINENTAL OIL COMPANY

By O. L. FISHER
Vice President

[SEAL] SELLER

ATTEST:

RICHARD JACKSON
Assistant Secretary

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[504] EXHIBIT "A"—GAS PURCHASE AND SALES AGREEMENT

CONTINENTAL OIL COMPANY—SELLER

TENNESSEE GAS TRANSMISSION COMPANY—BUYER

I. LEASES.

A. West Cameron Area (Outer Continental Shelf Leasing Map, Louisiana Map No. 1):

1. Continental File No. 41538—State of Louisiana Lease No. 1654, OCS Lease No. 0188. Lease dated November 19, 1948, executed by the State Mineral Board for the State of Louisiana, as Lessor, and Continental Oil Company, The Atlantic Refining Company, Tide Water Associated Oil Company and Cities Service Oil Company, as Lessees, covering Block No. 191-S/2, containing approximately 2,500 acres.

2. Continental File No. 41540—State of Louisiana Lease No. 1656, OCS Lease No. 0190. Lease dated November 19, 1948, executed by the State Mineral Board for the State of Louisiana, as Lessor, and Continental Oil Company, The Atlantic Refining Company, Tide Water Associated Oil Company and Cities Service Oil Company, as Lessees, covering Block No. 192-S/2, containing approximately 2,500 acres.

3. Continental File No. 41541—State of Louisiana Lease No. 1657, OCS Lease No. 0191. Lease dated

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November 19, 1948, executed by the State Mineral Board for the State of Louisiana, as Lessor, and Continental Oil Company, The Atlantic Refining Company, Tide Water Associated Oil Company and Cities Service Oil Company, as Lessees, covering Block No. 193-N/2, containing approximately 2,500 acres.

4. Continental File No. 41542—State of Louisiana Lease No. 1658, OCS Lease No. 0192. Lease dated November 19, 1948, executed by the State Mineral Board for the State of Louisiana, as Lessor, and Continental Oil Company, The Atlantic Refining Company, Tide Water Associated Oil Company and Cities Service Oil Company, as Lessees, covering Block No. 193-S/2, containing approximately 2,500 acres.

5. Continental File No. 41543—State of Louisiana Lease No. 1659, OCS Lease No. 0193. Lease dated November 19, 1948, executed by the State Mineral Board for the State of Louisiana, as Lessor, and by the Continental Oil Company, The Atlantic Refining Company, Tide Water Associated Oil Company and Cities Service Oil Company, as Lessees, covering Block No. 194-N/2, containing approximately 2,500 acres.

B. East Cameron Area (Outer Continental Shelf Leasing Map, Louisiana Map No. 2):

1. Continental File No. 36767—State of Louisiana Lease No. 1192, OCS Lease No. 0154. Lease dated

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July 19, 1947, executed by the State Mineral Board for the State of Louisiana, as Lessor, and Continental Oil Company, The Atlantic Refining Company, Tide Water Associated Oil Company and Cities Service Oil Company, as Lessees, covering Block No. 49, containing approximately 5,000 acres.

[505] 2. Continental File No. 36768—State of Louisiana Lease No. 1193, OCS Lease No. 0155. Lease dated July 19, 1947, executed by the State Mineral Board for the State of Louisiana, as Lessor, and Continental Oil Company, The Atlantic Refining Company, Tide Water Associated Oil Company and Cities Service Oil Company, as Lessees, covering Block No. 50, containing approximately 5,000 acres.

3. Continental File No. 36769—State of Louisiana Lease No. 1194, OCS Lease No. 0156. Lease dated July 19, 1947, executed by the State Mineral Board for the State of Louisiana, as Lessor, and Continental Oil Company, The Atlantic Refining Company, Tide Water Associated Oil Company and Cities Service Oil Company, as Lessees, covering Block No. 51, containing approximately 5,000 acres.

4. Continental File No. 36770—State of Louisiana Lease No. 1196, OCS Lease No. 0157. Lease dated July 19, 1947, executed by the State Mineral Board for the State of Louisiana, as Lessor, and

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Continental Oil Company, The Atlantic Refining Company, Tide Water Associated Oil Company and Cities Service Oil Company, as Lessees, covering Block No. 58, containing approximately 5,000 acres.

5. Continental File No. 36771—State of Louisiana Lease No. 1197, OCS Lease No. 0158. Lease dated July 19, 1947, executed by the State Mineral Board for the State of Louisiana, as Lessor, and Continental Oil Company, The Atlantic Refining Company, Tide Water Associated Oil Company and Cities Service Oil Company, as Lessees, covering Block 59, containing approximately 5,000 acres.

6. Continental File No. 36774—State of Louisiana Lease No. 1200, OCS Lease No. 0159, Lease dated July 19, 1947, executed by the State Mineral Board for the State of Louisiana, as Lessor, and Continental Oil Company, The Atlantic Refining Company, Tide Water Associated Oil Company and Cities Service Oil Company, as Lessees, covering Block 62, containing approximately 5,000 acres.

7. Continental File No. 36775—State of Louisiana Lease No. 1201, OCS Lease No. 0160. Lease dated July 19, 1947, executed by the State Mineral Board for the State of Louisiana, as Lessor, and Continental Oil Company, The Atlantic Refining Company, Tide Water Associated Oil Company

and Cities Service Oil Company, as Lessees, covering Block No. 63, containing approximately 5,000 acres.

8. Continental File No. 36776—State of Louisiana Lease No. 1204, OCS Lease No. 0161. Lease dated July 19, 1947, executed by the State Mineral Board for the State of Louisiana, as Lessor, and Continental Oil Company, The Atlantic Refining Company, Tide Water Associated Oil Company and Cities Service Oil Company, as Lessees, covering Block 67, containing approximately 5,000 acres.

9. Continental File No. 36779—State of Louisiana Lease No. 1207, OCS Lease No. 0162. Lease dated July 19, 1947, executed by the State Mineral Board for the State of Louisiana, as Lessor, and Continental Oil Company, The Atlantic Refining Company, Tide Water Associated Oil Company and Cities Service Oil Company, as Lessees, covering Block No. 70, containing approximately 5,000 acres.

[506] 10. Continental File No. 36780—State of Louisiana Lease No. 1208, OCS Lease No. 0163. Lease dated July 19, 1947, executed by the State Mineral Board for the State of Louisiana, as Lessor, and Continental Oil Company, The Atlantic Refining Company, Tide Water Associated Oil Company and Cities Service Oil Company, as Lessees, covering Block No. 71, containing approximately 5,000 acres.

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11. Continental File No. 41534—State of Louisiana Lease No. 1625, OCS Lease No. 0184. Lease dated November 19, 1948, executed by the State Mineral Board for the State of Louisiana, as Lessor, and Continental Oil Company, The Atlantic Refining Company, Tide Water Associated Oil Company and Cities Service Oil Company, as Lessees, covering Block No. 72, containing approximately 5,000 acres.

12. Continental File No. 41537—State of Louisiana Lease No. 1632, OCS Lease No. 0187. Lease dated November 19, 1948, executed by the State Mineral Board for the State of Louisiana, as Lessor, and Continental Oil Company, the Atlantic Refining Company, Tide Water Associated Oil Company and Cities Service Oil Company, as Lessees, covering Block No. 83-NW/4, containing approximately 1,250 acres.

C. Vermilion Area (Outer Continental Shelf Leasing Map, Louisiana Map No. 3):

1. Continental File No. 38635—State of Louisiana Lease No. 1371, OCS Lease No. 0167. Lease dated March 15, 1948, executed by the State Mineral Board for the State of Louisiana, as Lessor, and Continental Oil Company, as Lessee, covering Block No. 95-W/2, containing approximately 2,500 acres.

2. Continental File No. 38637—State of Louisiana Lease No. 1372, OCS Lease No. 0169. Lease

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dated March 15, 1948, executed by the State Mineral Board for the State of Louisiana, as Lessor, and Continental Oil Company, The Atlantic Refining Company, Tide Water Associated Oil Company and Cities Service Oil Company, as Lessees, covering Block No. 96, containing approximately 5,000 acres.

3. Continental File No. 38636—State of Louisiana Lease No. 1373, OCS Lease No. 0168. Lease dated March 15, 1948, executed by the State Mineral Board for the State of Louisiana, as Lessor, and Continental Oil Company, The Atlantic Refining Company, Tide Water Associated Oil Company and Cities Service Oil Company, as Lessees, covering Block No. 108, containing approximately 5,000 acres.

4. Continental File No. 38970—State of Louisiana Lease No. 1443, OCS Lease No. 0170. Lease dated May 10, 1948, executed by the State Mineral Board for the State of Louisiana, as Lessor, and Continental Oil Company. The Atlantic Refining Company, Tide Water Associated Oil Company and Cities Service Oil Company, as Lessees, covering Block No. 75-N/2 and SW/4 containing 3,750 acres.

5. Continental File No. 38971—State of Louisiana Lease No. 1444, OCS Lease No. 0171. Lease dated May 10, 1948, executed by the State Mineral Board for the State of Louisiana, as Lessor,

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and Continental Oil Company, The Atlantic [507] Refining Company, Tide Water Associated Oil Company and Cities Service Oil Company, as Lessees, covering Block No. 78-N/2, containing approximately 2,500 acres.

6. Continental File No. 38973—State of Louisiana Lease No. 1446, OCS Lease No. 0172. Lease dated May 10, 1948, executed by the State Mineral Board for the State of Louisiana, as Lessor, and Continental Oil Company, The Atlantic Refining Company, Tide Water Associated Oil Company and Cities Service Oil Company, as Lessees, covering Block No. 86, containing approximately 5,000 acres.

7. Continental File No. 38974—State of Louisiana Lease No. 1447, OCS Lease No. 0173. Lease dated May 10, 1948, executed by the State Mineral Board for the State of Louisiana, as Lessor, and Continental Oil Company, The Atlantic Refining Company, Tide Water Associated Oil Company and Cities Service Oil Company, as Lessees, covering Block No. 87-S/2, containing approximately 2,500 acres.

Continental Oil Company owns 25% interest in the above described leases.

II. Dedication

[508] A. Reservoirs in East Cameron and West Cameron Areas:

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Continental Oil Company's interest in leases described in Section I, Subsections A and B of this Exhibit "A" is dedicated insofar, but only insofar, as the leases cover and include a reservoir or reservoirs discovered by the date of this agreement, which reservoirs are identified below by sand intervals, as measured from conventional electric logs, encountered and identified in respective wells, as follows:

Sand Interval Measured from Conventional Electric Log	Well in which Sand Interval is Identified
4451 - 4592	192 B-1
4642 - 4792	192 B-1
4897 - 4992	192 B-1
5182 - 5196	192 A-1
5550 - 5608	192 B-1
5987 - 6040	191 A-4
5826 - 5944	192 B-1
6110 - 6129	192 B-1
6212 - 6238	192 B-1
6585 - 6667	192 B-1
6968 - 6990	192 A-1
7241 - 7270	192 A-1
7811 - 7833	191 A-4
7807 - 7827	192 A-1
8080 - 8098	192 A-1
8225 - 8313	192 A-1
8796 - 8867	192 A-1
9215 - 9255	194 A-2
9483 - 9552	192 B-1
5278 - 5446	49 A-2
6007 - 6074	49 A-2
6488 - 6498	49 A-2
6680 - 6687	49 A-2

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Sand Interval Measured from Conventional Electric Log	Well in which Sand Interval is Identified
7174 - 7322	49 A-2
7888 - 7910	49 A-2
8296 - 8308	49 A-2
9970 - 9991	49 A-2
10073 - 10082	49 A-2
10594 - 10645	49 A-2
11080 - 11099	49 A-2
7005 - 7045	66 A-2
6397 - 6410	62 A-1
6845 - 6853	62 A-1
7126 - 7186	62 A-1
7935 - 8027	66 A-2
7621 - 7765	62 A-1
4061 - 4072	71 A-1
6831 - 6839	72 A-2
[509] 6579 - 6589	71 A-1
6686 - 6701	71 A-1
7129 - 7176	71 A-1
7497 - 7591	72 A-1
7470 - 7480	71 A-1
7594 - 7682	71 A-1
8063 - 8103	71 A-1
8443 - 8467	71 A-1
8831 - 8866	72 A-2
8896 - 8920	71 A-1
8999 - 9067	71 A-1

B. Reservoirs by depths in Vermilion Area:

Continental Oil Company's interest in leases described in Section 1, Subsection C of this Exhibit "A" is dedicated insofar, but only insofar, as they cover and include a reservoir or reservoirs which

Item No. A, Gas Purchase and Sales Agreement, Dated August 17, 1956, Between Tennessee Gas Transmission Company, as Buyer and Continental Oil Company, as Seller

may be encountered or discovered above 11,000 feet (measured true vertical depth) below the seabed, provided that where a reservoir is first encountered or discovered in the discovery well at a greater depth than 11,000 feet below the seabed, such reservoir will not be dedicated even though subsequent drilling establishes that a part of the reservoir is above 11,000 feet below the seabed.

C. Maximum Volume:

Continental Oil Company's dedication of reservoirs and reservoirs which may be discovered above certain depths, as set out in Section II, Subsection A and B of this Exhibit "A", is limited to a maximum volume of 25% of two trillion cubic feet of gas. Volumes of gas which Continental Oil Company may own in the dedicated reservoirs in excess of the maximum volume dedicated hereunder shall be excepted from the dedication.

• • •

Notice of Intervention of Public Service Commission of the State of New York, Docket Nos. G-11024, *et al.*, Filed October 22, 1956

* * *

[669] The Public Service Commission of the State of New York, a regulatory body of the State of New York having jurisdiction to regulate rates and charges for the sale of natural gas within said State, hereby gives notice that it intervenes in this proceeding.

Dated: Albany, New York
October 19, 1956

PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK

By /s/ KENT H. BROWN
Kent H. Brown
Counsel
55 Elk Street
Albany, New York

* * *

Order Permitting Interventions, Docket Nos. G-11024, *et al.*, Issued February 27, 1957

* * *

[694] Continental Oil Company, *et al,* (Applicants) have separately applied in the above-entitled proceedings for certificates of public convenience and necessity authorizing sales of natural gas in interstate commerce by Applicants to Tennessee Gas Transmission Company (Tennessee) for resale. By notice issued October 3, 1956 and published in the Federal Register on October 11, 1956 (21 FR 7783-84), these separate proceedings were consolidated and October 19, 1956 was fixed as the last day for filing protests or petitions to intervene.

Separate petitions for leave to intervene have been filed in the above-captioned consolidated proceeding by the Petitioners tabulated below as indicated. In addition, the Public Service Commission of the State of New York filed a notice of intervention on October 22, 1956.

Petitioner	Date Filed
Brooklyn Union Gas Company	10/18/56
Long Island Lighting Company	10/18/56
Lake Shore Pipe Line Co.	10/19/56
Tennessee Gas Transmission Company	10/19/56
Public Service Electric and Gas Company	2/20/57

The Commission finds:

(1) That although the New York Public Service Commission and the Public Service Electric and Gas Company did not file within the time required by Section 1.8 (d) of the Commission's Rules of Practice and Procedure, good cause has been shown to permit such late filings.

[695] (2) That the participation of the above-listed Petitioners and the New York Public Service Commission in the instant proceedings may be in the public interest

Order Permitting Interventions, Docket Nos. G-11024, et al., Issued February 27, 1957

The Commission orders:

That the above-listed Petitioners and the New York Public Service Commission be and the same hereby are permitted to become Interveners in the above-captioned consolidated proceeding, subject to the rules and regulations of the Commission; *Provided, however,* That the participation of Petitioners as Interveners shall be limited to matters affecting asserted rights and interests specifically set forth in their respective petitions for leave to intervene; and *Provided, further,* That the admission of Petitioners and the New York Public Service Commission as Interveners shall not be construed as recognition by the Commission that they or any of them might be aggrieved because of any order or orders of the Commission entered in such proceeding.

By the Commission.

J H GUTRIDE
Joseph H. Gutride,
Secretary.

Motion of New York Commission for Consolidation, Docket Nos. G-11024, *et al.*, Filed March 19, 1957

* * * *

[709] Comes now the Public Service Commission of the State of New York, an intervener in each of the above entitled dockets, and respectively moves that the above entitled dockets be consolidated for hearing. In support of said motion the New York Commission respectfully shows:

1. The first four of the above numbered dockets (hereinafter referred to as the CATCO dockets) each involves an application for a certificate of convenience and necessity pursuant to Section 7(c) of the Natural Gas Act for authority to make a sale to Tennessee Gas Transmission Company from off-shore points in Louisiana. Each of these four dockets has been consolidated for hearing and hearings have been held therein on February 28 and March 1, 1957.

2. The proceeding at Docket No. G-11107 involves an application for a certificate of public convenience and necessity pursuant to Section 7(c) of the Natural Gas Act for authority for Tennessee to construct some $167,000,000 of additional facilities in order to increase its capacity approximately 450,000 Mcf per day.

[710] 3. Over 90% of Tennessee's additional reserves in G-11107 are to be provided from the CATCO reserves involved in CATCO dockets. Over $16,000,000 of the construction relates directly to the construction of facilities from the off-shore points to Tennessee's system at Kinder, Louisiana. Of the balance of Tennessee's proposed construction it is impossible to determine at this point what portion is applicable wholly or in part to the acquisition of the CATCO reserves.

Motion of New York Commission for Consolidation, Docket Nos. G-11024, et al., Filed March 19, 1957

4. It is evident that the economic feasibility of the proposals in the CATCO dockets is inextricably bound up with the proposals involved in G-11107.

5. Prior Federal Power Commission procedure in such matters until recently has been to consolidate the related pipeline and independent producer Section 7 applications. E.g. *Matter of Tamborello, et al.*, Docket No. G-3045, et al., *Matter of Tennessee Gas Transmission Company, et al.*, Docket No. G-8805, et al. While there have been a few deviations in this procedure quite recently, in each case the pipeline docket was heard first and had either reached completion or near completion before the producer docket was set for hearing. E.g. *Matter of Coastal Transmission Company, et al.*, Docket No. G-9960, et al.

6. In the CATCO dockets here involved, the Examiner has ruled that the opposing interveners might not go into the subject of what portion of the proposed $167,000,000 of facilities related directly to the gas which is the subject of the CATCO dockets. [711] *A fortiori* it would be impossible to determine the economic feasibility of the proposed sale by CATCO and purchase for Tennessee in the CATCO dockets.

7. It is evident that a sale of gas does not exist in abstract wholly divorced from the related purchase. The Commission's staff itself has noted the interrelationship of the producer and pipeline dockets and has recommended that the Tennessee application be consolidated with the CATCO dockets. See memorandum to the Commission from Bureau of Rates and Gas Certificates dated February 4, 1957.

Motion of New York Commission for Consolidation, Docket Nos. G-11024, et al., Filed March 19, 1957

WHEREFORE, the Public Service Commission of the State of New York respectfully moves that the above entitled CATCO dockets be consolidated with the related pipeline docket for purposes of hearing and decision.

Respectfully submitted

PUBLIC SERVICE COMMISSION OF STATE OF NEW YORK
By /s/ KENT H. BROWN
KENT H. BROWN
Counsel
55 Elk Street
Albany 1, N. Y.

MORTON L. SIMONS
Of Counsel

(Sworn to March 18, 1957.)

• • •

Presiding Examiner's Decision Upon Applications for Certificate of Public Convenience and Necessity, Filed Pursuant to Section 7 (c) of the Natural Gas Act, Docket Nos. G-11024, *et al.*, Issued March 29, 1957

* * *

[744] SIMPSON, PRESIDING EXAMINER: The proceeding arises under the certificate provisions of Section 7 (c) of the Natural Gas Act (Act).

By separate applications filed in each of the dockets appearing in the caption, above, September 5, 1956, September 7, 1956, September 10, 1956 (latter two dockets), respectively; Continental Oil Company (Continental), The Atlantic Refining Company (Atlantic), Cities Service Production Company (Cities), and Tidewater Oil Company (Tidewater) applied for statutory authorization to sell natural gas from leases in the West Cameron, East Cameron and Vermilion areas, in the Gulf of Mexico, offshore the coast of Cameron and Vermilion parishes, Louisiana, to Tennessee Gas Transmission Company (Tennessee) pursuant to separate contracts between each one of them and Tennessee, dated, respectively, August 17, 1956 (Continental-Tennessee contract), August 10, 1956 (Atlantic-Tennessee contract), August 14, 1956 (Cities-Tennessee contract, and Tidewater-Tennessee contract).

[745] On October 3, 1956, the Secretary duly issued a "Notice of Applications" pertaining to the above filings, which directed that these related matters should be heard on a consolidated record, and on February 8, 1957, issued a "Notice of Hearing". Pursuant to these notices and upon appropriate publication and service thereof the hearing thus provided was duly held, commencing February 28, 1957, and concluding the following day, concerning the matters involved and the issues presented by these applications.

By order issued February 27, 1957, the Commission permitted intervention by the petitioners Tennessee Gas

Transmission Company (Tennessee), The Brooklyn Union Gas Company (Brooklyn), Long Island Lighting Company (Long Island), Public Service Electric and Gas Company (Public Service), Lake Shore Pipe Line Company (Lake Shore), and permitted late filing by the New York Public Service Commission (New York) of the latter's notice of intervention received by the Commission October 22, 1956. All of the interveners actively participated in the proceedings, some throughout the hearing until the conclusion thereof on the second day. Initial and reply briefs have been filed by or on behalf of all participants, including Applicants, interveners, and the Commission's staff.[1]

By order issued March 8, 1957, the Commission denied a motion made by Applicants at the conclusion of the hearing on March 1, 1957, to omit the intermediate decision procedure.

The Issues

The basic issues are those presented in certificate proceedings had under Section 7 (c) and (e) of the Act, to-wit:

(a) Is the Applicant, each of them, duly qualified and able and willing properly to do the acts and to perform the service proposed and to conform to the provisions

[1] The applicants Atlantic and Cities filed a joint initial memorandum brief as did the applicants Continental and Tidewater. Counsel for the Public Service Commission complains in his initial brief of "the inadequate time set by the Examiner for the filing of initial briefs." As this counsel was one of those who did not attend the concluding portion of the hearing on the second day and no one spoke for him, the Presiding Examiner was unadvised as to any further situations concerning him which might have been entitled to consideration in connection with the determination of the time for filing briefs.

of the Act and the requirements, rules, and regulations of the Commission thereunder;

[746] (b) Is, or will, the proposed service, sale, or operation required, or be required, by the present or future public convenience and necessity.

CONTENTIONS

Applicants.

The Applicants contend to the effect: that the record shows that based upon sizable reserves as well as potentials, Applicants are able to perform the service proposed; that Applicants' willingness to perform is established by the consummation of the contracts of sale with Tennessee, by the prosecution of the several applications, and by the evidence of record; and that the present and future public convenience and necessity require issuance of the certificates in order that the subject reserves may be used to supply the expansion and demands of Tennessee's markets; that the initial price to be charged under the contracts will not exert a disruptive effect on other contracts, will not trigger other Tennessee contracts, and will not precipitate the filing by Tennessee for an increase in its rates.[2] Applicants aver that if they are unable to

[2] In contending that the determination of a just and reasonable rate is left under the Act to Section 4 and Section 5 proceedings and is not to be determined thereunder in a Section 7 proceeding, the Applicants Continental and Tidewater point out that there is now pending under the Commission order of January 27, 1956 a Section 5 (a) proceeding against Atlantic and Tidewater (G-9283 and G-9284) and the Applicant Continental, *et al.* (G-9279), with respect both to rates in effect and those proposed to be made, and further contend that the same are entitled to have their rates tested in such pending proceedings with all of the procedural safeguards which are attendant thereon, and that it would be contrary to the public interest to turn these certificate proceedings into rate proceedings.

secure certificates within the time as shown by the record to be required, they will have no alternative but to market the gas elsewhere or face the loss of their properties; and that conditioning Applicants' certificates upon the final granting of a certificate to Tennessee to construct facilities to transport the gas to shore, as proposed by Tennessee in Docket No. G-11,107 can serve no useful purpose and would in effect be the same as refusing Applicants their certificates.

As to a condition proposed by Staff counsel dealing with the transportation of liquefiable hydrocarbons by Tennessee for Applicants from offshore platforms to points on shore, the latter (Continental and Tidewater) contend that this is a matter that can properly be considered in future rate cases involving the price to be charged by Applicants under the contracts and that if it should appear at any time that the transportation arrangement imposes any burden upon Tennessee's [747] consumers proper adjustments may then be made after a complete review of all rate factors.

Interveners

Tennessee Gas Transmission Company. This intervenor supports the applications for certificates and contends, in substance: that the gas reserves involved are well located in relation to Tennessee's system, affords the latter an entry into offshore areas of large gas reserves, places Tennessee in a favorable position to acquire large reserves to be developed in the future, and enables the latter to continue to meet the expanding demands of its markets; that the volumes of gas specified in the contracts can

be delivered to Tennessee; that the gas to be delivered will be of high quality; that the construction by Tennessee of the facilities required to bring the gas from Applicants offshore platforms to the Tennessee's main line at Kinder, Louisiana, is feasible; that under valid assumptions the effect of the instant contracts on Tennessee's 1958 weighted average cost of gas is an increase of but 0.97 cents per Mcf; that under the authority of alleged holdings of the Commission in previous cases the justness and reasonableness of prices to be paid under gas purchase contracts should not be inquired into in producer certificate cases; and that the proposed sales of the Applicants, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the public convenience and necessity, and certificates therefor should here issue. Tennessee avers that the price provisions in the contracts involved here do not trigger any of Tennessee's existing favored nation or renegotiation clauses contained in its other gas purchase contracts, nor, as far as the evidence discloses, any such clauses contained in the contracts of any other company.

Other Interveners. In general the intervention of the intervener customers of Tennessee rests basically upon an asserted interest in the effect the prices to be paid by Tennessee for the gas proposed to be purchased herein, and the terms and conditions of the contract pertaining thereto, will have on the price charged by Tennessee for gas sold by it to interveners.[3] Considered as a group

[3] Brooklyn and Long Island state that neither is seeking additional quantities of firm gas from Tennessee in the latter's pending certificate proceeding (G-11,107) relating to market expansion and the use of the additional supplies of natural gas here involved.

the contentions of these interveners are to the effect:

[748] that Applicants have failed to justify the proposed price of gas to Tennessee; that once the Commission certificates these Applicants and Tennessee begins taking gas from the reserves interveners will be powerless to attack the price for such gas in any future rate proceeding; that the evidence presented does not show what the effect of the purchase of gas under these four contracts will be on Tennessee's over-all cost of gas delivered in its main system ashore or on Tennessee's rates to customers; that Applicants offered no evidence to justify the proposed initial price, allegedly the highest yet known in the Southwestern United States; that the Applicants have thus failed to meet the statutory requirements for the issuance of certificates under Section 7 (c) of the Act;[4] and that, accordingly, the Commission cannot properly reach a determination that the proposed service is in the public interest and required by the public convenience and necessity. Interveners aver that the shelf-land covered by the leases is within the offshore area in dispute between the Federal Government and the State of Louisiana and depending in part upon the resolution of that controversy the leases might be bound to be within an established pricing area and would thus eventually trigger the favored nations clauses of some 20 of Tennessee's existing contracts in the Southwestern Louisiana pricing area. Interveners also contend as the evi-

[4] The intervener Lake Shore states that there is no question, insofar as it is concerned, as to the ability and willingness of the Applicants to perform (M. Br., p. 3). Brooklyn and Long Island emphasize the rate aspects. The intervener Public Service directly raises the issue of "able and willing properly to do the acts and to perform the service proposed" (M. Br., pp. 9-10).

dence indicates that an extension of Tennessee's existing pipe line is required (G-11,107), to take deliveries of gas under Applicants contracts herein the equities involved require that any certificates issued should be conditioned upon the granting of a certificate to Tennessee for the said extension (M. Br., p. 28, Brooklyn Union and Long Island; M. Br., p. 11, Public Service); and that the present or future public convenience and necessity also require the Commission to attach a rate condition to such certificates of such nature as to prevent the establishment of a new peak price of gas in the area and thus discourage the "leap-frogging" (price-wise) which will inevitably follow these transactions unless the Commission takes such action. (M. Br., Public Service, p. 20), one requesting that the condition provide a rate not to exceed the rates which Tennessee is presently paying for natural gas produced by Applicants in the so-called West Delta, Louisiana, offshore area (M. Br., p. 14, Lake Shore).

[749] The brief of the New York Public Service Commission as to the merits follows substantially the contentions of the immediately preceding interveners. This brief also contains additional and otherwise surprising matter in the nature of allegations essentially misstating the manner in which the hearing was conducted, with respect to which the appropriate reply of counsel for the Applicants Continental and Tidewater (R. Br., p. 20) and Atlantic and Cities (R. Br., pp. 2-3) and the intervener Tennessee (R. Br., p. 2, n. 2) constitute sufficient answers and a basis for giving the further consideration thereto in this decision.

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Staff Counsel

Staff counsel submits that Applicants are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Act and the requirements, rules and regulations of the Commission thereunder; and that the proposed sale of natural gas by Applicants to Tennessee is or will be required by the present or future public convenience and necessity; and recommends, substantially, that Applicants be issued their certificates of public convenience and necessity.

Staff counsel contends that no question or issue of rates is involved in this proceeding, on the ground that at such time as Tennessee proposes an increase in rates or it can be shown that Applicants' rates have a consequential and material effect upon the rates of Tennessee, the question of the justness and reasonableness of Applicants' rates may be investigated and passed upon in a proper proceeding. Counsel further contends, in effect, that the question of any need for remuneration to Tennessee for the transportation by it of liquid hydrocarbons for Applicants from offshore to shore locations, should be held in abeyance until such time as Tennessee proposes to actually transport, but proposes that an order issuing the certificates contain an appropriate reservation in the premises.

DISCUSSION

[750] *Jurisdiction*

Each Applicant concedes, in substance, that on information and belief, all or a portion of the gas to be sold by the respective Applicant will be transported by Tennessee

in interstate commerce for resale, for ultimate public consumption, and such is effectually disclosed in the evidence.

Contentions by the Applicants that they are not subject to the Commission's jurisdiction are answered in the Commission's Opinion No. 284, in *Matters of Deep South Oil Company of Texas, et al.* (G-2952, etc.) and Opinion No. 285 in *Matters of Dixie Pipe Line Company, et al.* (G-2401, etc.) which require the finding and conclusion in this proceeding that the sales of natural gas proposed by Applicants will be sales in interstate commerce for resale within the jurisdiction of the Commission, and that Applicant will thereby be a "natural-gas company" within the meaning of the Act.

The Merits

Continental is a major oil and gas company with substantial assets. The other three companies also are substantial operators in oil and gas. It satisfactorily appears that none of these companies own any interest in any one of the other and there is no affiliation between them.

In the event satisfactory certificates are issued within the time provided in the contracts, which are the subject of this proceeding, Continental will be ready, willing and able to perform its obligations under its contract with Tennessee and the other three applicants are likewise ready, willing and able to carry out their agreements with Tennessee.

Though these matters are testified to solely by Continental's land superintendent in charge of the latter's

marine or offshore region, on the basis of advice received from others his responsibilities and duties with respect to the business of supervision and development of leases, with or without joint interests present, which are inferred to relate to such matters, and his position in the company with respect to exploration, are deemed to remove his testimony from the realm of pure or uncorroborative hearsay to that of reasonably reliable and probative evidence as to matters on which Continental relies in conducting its day to day business. Further, Applicants' counsel offered to produce further witnesses as desired by cross-examining counsel, but was not requested or advised to do so.

[751] Continental, Atlantic, Tidewater and Cities[5] own each an undivided quarter interest in the leases here subject to the contract with Tennessee. These leases are located some 15-25 miles offshore in blocks or portions of blocks and total some 95,000 acres. They embrace what appear to be three or more fields located on the Continental shelf in the Gulf of Mexico, in the so-called West Cameron, East Cameron, and Vermillion areas.

The leases were acquired from the State of Louisiana by purchase at sales conducted by the State Mineral Board at Baton Rouge, Louisiana, in 1947 to 1948, and have been continued under Section 6 of the Outer Continental Shelflands Act. It satisfactorily appears that in order to comply with the obligation of the leases and the Shelflands Act, production from the leases should commence by 1958.

[5] Known as the CATC Group, from the initials of the names of the four companies.

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Three of the Applicants have designated Continental as operator of the leases and Continental has created an operating organization within itself known as its CATC Marine Region which conduct the offshore activities for which it is responsible. However, each Applicant has retained to itself responsibility for marketing its own production from its lease interests.

The Contracts.

The basic terms and conditions of the contracts between each of the producer companies and Tennessee are identical. Under the terms of these contracts deliveries to Tennessee are scheduled to commence November 1, 1957. From November 1, 1957 to November 1, 1958, Tennessee will be required to take 175,000 Mcf (or four-fifths of the maximum efficient rate of flow, whichever is less). From and after November 1, 1958, Tennessee will be required to take, or pay for, 1,000 Mcf for every 8,000,000 Mcf of recoverable gas originally in place in the dedicated reserves. Delivery to Tennessee will be effected by or on behalf of the Applicants at the latter's offshore drilling platforms.

The dedication under the contracts is up to a maximum of 2,000,000,000 Mcf with the right to Applicants to dedicate to the contract on or before August 1, 1957, or August 1, 1958, additional gas reserves in the areas[6] up to the amount of 1,000,000,000 Mcf[7], and, subject to several conditions, including an extension of the term [752] of the contract, certain additional reserves

[6] West Cameron, East Cameron, and Vermillion areas.
[7] No additional dedications have been yet effected.

may be dedicated each 12 months during the period August 1, 1958 to August 1, 1967. However, the initial dedication is not only limited to 2,000,000,000 Mcf, but is limited also by lease lines, reservoirs specified in exhibits attached to each contract, and by depth (Vermillion area only).

The gas sold to Tennessee is to be metered on the Applicants' offshore platforms and delivered at the valve on the discharge side of the meter.

Facilities

Other than wells and platforms, facilities owned and operated by or on behalf of Applicants for the purpose of effecting deliveries to Tennessee will include separators and meters on the platforms. Tennessee is to provide the offshore pipeline and will be required to connect up each of Applicants' producing platforms. Applicants will not own or operate a gathering system and will own no facilities, so far as deliveries to Tennessee are concerned, beyond the platforms.[8]

Continental as operator of the leases, will be able to commence deliveries to Tennessee on November 1, 1957 as required by the contract, if Tennessee is granted the certificate applied for by the latter in Docket No. G-11107 in time to construct the facilities necessary to enable it (Tennessee) to accept such deliveries.

To receive gas from nine existing platforms and deliver it to Tennessee's main line system at Kinder, Louisiana, will require the construction by Tennessee of 46.9

[8] Because of directional drilling as a method of developing offshore reserves Applicants may have as many as five wells drilled from one platform.

miles of 26-inch line from Kinder to the shore's edge and 60.8 miles of 26-inch to 12-inch lines thence to the platforms offshore, at an estimated total cost of $16,315,412.[9]

Tennessee is seeking a certificate of public convenience and necessity for these facilities in G-11107 in connection with a proposed general expansion of its system.

Tennessee represents through the testimony of its witnesses that it is willing and able to construct these lateral facilities necessary to receive the gas here involved. It has had experience in the construction of similar offshore facilities in another location off the same coast, and there appears to be no particular technical problems to be confronted in the construction of such facilities which cannot be overcome by normal engineering practices.

[753] However, due to late summer and fall weather conditions usually prevailing in the Gulf, Tennessee must commence construction of the offshore gathering system not later than early spring of this year.

Failure to complete the system in time would place in jeopardy Tennessee's rights under its contracts with Applicants, and so far as the latter relied upon timely completion which failed would place in jeopardy the titles to their leases.

[754] *Tennessee's Requirements for Additional Gas*

Tennessee's vice-president in charge of gas purchases, who represented Tennessee in the lengthy negotiations of

[9] In the event of dedication of additional gas reserves the contracts would require Tennessee to build as much as one mile of offshore lateral gathering line for each 10,000,000 Mcf of gas reserves added up to 100,000,000 Mcf for each of 9 years. This presents no problem here.

the instant contracts, testified that Tennessee's purpose was to obtain gas reserves to supply the expansion of Tennessee's market as shown in Tennessee's pending application in Docket G-11107. *None of the data which it is assumed was filed in support of such application is in evidence in this proceeding.*

Gas Available

Twenty-two wells have been drilled on the leases by the four companies,[10] nine of which are dual completions. Eleven additional wells are programmed for 1957 and there will be further development by drilling in subsequent years. There are nine platforms in place on which there is either a well drilling or one or more wells completed. Two more platforms at least are to be added after production.

Tennessee's gas reserve witness testified that he estimated that the recoverable gas reserves in the three fields under the 95,000 acres dedicated as above set forth[11] totalled some 1,673,929,000 Mcf (14.73 psia).[12] The estimates are derived by using the volumetric method as applied to information obtained from the operator, consisting of descriptions and maps of the leases, and well surveys, with electrical logs, core descriptions, and well test information.

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[10] Four dry holes presumably are not included in this number.

[11] Limited by lease lines, reservoirs, and depth, *supra*. Of the 95,000 acres only 11,500 are in fact proven.

[12] Subject to some reduction if Applicants remove the condensate. The contract limits the reduction in volume for such purposes to 10%. The estimated reduction is much less than that thus allowed. Of the total proven reserve of 1,673,929,000 Mcf some 430,000,000 Mcf is untested by conventional production methods and rests on the correlation of electric well log and core analysis data.

In nearly all instances the witness made his own structural maps. He made his own determinations of average sand thickness, productive limits, porosity, and connote water, having available for these purposes his own experience and interpretative information contained in Tennessee's own files pertaining to similar fields along the Louisiana Gulf Coast area. He derived reservoir temperature and pressures from well informa-
[755] tion and gradient curves, allowed for deviation from compressibility, and assigned recovery factors. His reserve estimates, though made independently in the manner stated, agree substantially with those of the operator. None of the gas is associated with oil and it is relatively low in condensate.

Basing his testimony on well information and the number of wells drilled and to be drilled, Tennessee's reserve witness testified in conclusion that in his opinion the volumes of gas specified by terms of the contract can be delivered to Tennessee, i.e. 175,000 Mcf per day (15.02 psia) the first year and thereafter in accordance with the reserve ratio.[13]

Tennessee's vice-president in charge of gas purchases testified that these reserves which would amount to a substantial portion of Tennessee's total reserves, not only constituted the only large package of gas for sale in the Gulf Coast area at the time of negotiations, but were well

[13] At the contract take or pay ratio effective after the first year (1,000 Mcf per day for each 8,000,000 Mcf of original recoverable reserves) the average minimum rate of take would become 1/8,000 of 1,673,929,000 Mcf or 209,000 Mcf (14.73 psia) per day. The contracts also provide a formula for the maximum demand which Tennessee can make upon Applicants, providing, on certain assumptions, a swing between the foregoing minimum of 209,000 Mcf and a maximum of 250,000 Mcf per day (14.73 psia).

located with respect to Tennessee's system, and had a significant potential for additional reserves as the acreage is developed, in all advantages of so substantial a character as to have led most of the other interstate gas transmission companies to enter highly competitive bids for them. None of the interveners made any substantial contention that the acquisition of these reserves by Tennessee were improvident or useless or were other than favorable to the interest of the public served by Tennessee's system. In fact the only real objection by interveners to the granting of a certificate to these Applicants is to the price at which these reserves were acquired by Tennessee.

[756] *Prices*

As previously stated herein the contracts set an initial price of 21.4¢ per Mcf (15.025 psia) applicable substantially to the period from the date of initial delivery (November 1, 1957) to November 1, 1962, and provide thereafter for step escalations, briefly at the rate of 2¢ per Mcf every four years until the expiration of the contract. The contracts also provide for reimbursement of State production taxes or a Federal equivalent dependent upon the settlement of title to the offshore shelf lands. The production or severance tax imposed by the existing laws of the State of Louisiana (Act No. 11, Laws 1948; Act No. 45, Laws 1954, amending) is 1¢ per Mcf.

Including the gas which Tennessee proposes to purchase under these contracts, some 240,000 Mcf per day (14.7 psia), it is estimated that the weighted average cost of all gas to Tennessee in 1958 will be some 13.70¢ per Mcf.

as compared with 12.73¢ if the gas here proposed to be purchased is excluded.[14]

Interveners have elicited from their examination of witnesses that, among other things, in the West Delta offshore area, some 200 miles distant, Applicants are selling gas to Tennessee at 17¢ per Mcf; that Tennessee pays only slightly in excess of 10¢ per Mcf, including the gathering tax, in its Southwestern Louisiana pricing area; that Tennessee is not paying as high a price as 21.4¢ to any other producer under any contract; that the step escalation provided in the instant contracts were inserted in part at least, in lieu of favored nations and price redetermination clauses, and are the steepest of any such provisions in Tennessee's present gas purchase contracts. However, initial or other prices paid by other interstate pipelines in long term contracts in onshore areas equal or exceed 20¢ per Mcf for smaller reserves and smaller future potentials than those provided by Applicants' contracts here with Tennessee, and steep step escalations are not unknown in interstate pipeline contracts. All such matters, nevertheless, assume a basis of comparison not provided by the evidence of record in this proceeding. Varying operating conditions, characterizing different transactions could be most significant. Tennessee did not initiate the foregoing price comparisons and no real effort was made by interveners to adequately support them. In any event, to permit such an exploration in this proceeding would simply invite the opening up of the whole subject of the validity of all rates entering into the comparison, viz., not only [757] the

[14] Neither cost figure reflects possible increases which may be filed for under the provisions of Tennessee's other contracts, whether or not these contracts with Applicants become effective.

prices here immediately involved, but the rates charged in the West Delta area,[15] and the others mentioned. This is more than the Act requires or intends in a Section 7 certificate proceeding, such as here, where public convenience and necessity is inherently the basic issue, certainly in the absence of any showing of imprudence or of abuse of discretion by management.

Therefore, assuming management has discretion, within its proper range, to make a selection as to sources of gas supply, and, in the absence of any substantial indication in the evidence or even serious claim by interveners that the initial cost of this gas by itself would necessarily lead to an increase in Tennessee's rates to jurisdictional customers, no grounds appear for permitting this case under Section 7 of the Act to assume the character of a rate proceeding under Section 5 (a) thereof.

Any attempt to add the Mcf cost of lateral line, pipe line, or gathering facilities directly to the price of gas at the offshore platforms for the purpose of arriving at some total Mcf cost of gas to Tennessee's system would simply involve the unwarranted assumption that any other addition of reserves, in lieu of those here involved, would not likewise entail the construction of additional facilities of like nature and of substantial size and proportionate cost. Moreover, the evidence here clearly shows that single or package reserves of such size as Applicants' were not available to Tennessee from other sources in the Gulf Coast area.

Barring questions which cannot be resolved in this proceeding concerning Louisiana's title to the offshore shelf

[15] The West Delta reserves are smaller than those the Applicants offer here

lands and the significance of a determination of title in Louisiana as to the possible seaward extension of parish lines with respect to the territorial scope of price provisions in Tennessee's onshore contracts, the opinion of Tennessee's operating officials is that the West Cameron, East Cameron and Vermilion areas constitute new pricing areas and that the price provisions of the contracts here involved will not trigger existing favored nations or renegotiation clauses in Tennessee's other gas purchase contracts in its Southwest Louisiana pricing area nor, in fact, so affect any of Tennessee's other gas purchase contracts, and no participant made a showing to the contrary.

[758] *The "Substitution" Clause*

Subject to certain conditions not here pertinent, Section 3(j) of the contracts provides a substitution or permissive delivery clause whereby, in substance, each Applicant may deliver up to its 25% share of 50,000 Mcf per day in addition to the respective contract quantities if Applicants are prevented from delivering to Tennessee from their gas reserves dedicated to Tennessee in fields in the West Delta area, such additional deliveries to be made under the terms and prices of these contracts but to be allocable against Applicants' commitments to Tennessee under the West Delta contracts.

This clause was inserted at the suggestion of Tennessee, due to the fact that the gas reserves dedicated to Tennessee under the West Delta contract are so rich in distillate or condensate as to entail possible retrograde condensation in the reservoir during production. Under

such circumstances a possibility exists that either State authorities might require or producers might desire to cycle the gas and recover the liquids, in which circumstances deliveries to Tennessee from that area could or would be curtailed at the time. Operations under Section 3(j), above, would assume make-up deliveries from West Delta at a later time after cycling was completed, and the overall arrangement would operate to enable Tennessee to receive its rightful quantities of gas under any circumstance, and to eventually receive under each contract all contract quantities, probably at the same ultimate resultant cost of purchase. Inequities possibly latent in such an operation cannot now be determined and are not to be considered as if presented for such determination in this proceeding. The clause is not objectionable *per se*.

Applicants' Extraction and Transportation Rights

Section 6(b) of the contracts provide, in brief, that, in addition to mechanical or low temperature separation, Applicants may process the gas for the recovery of liquefiable hydrocarbons including the methane-ethane stream at a shore based extraction plant, provided that such process, together with fuel use, will not remove more than 10% of the volume of gas daily produced and delivered to Tennessee. Moreover, the gas finally delivered to Tennessee must have a total heating value of not less than 1,000 Btu per cubic feet.

Several considerations are pertinent to this matter:

In making deliveries to Tennessee at the off-shore platform Applicants must provide separators to eliminate water in order to meter and deliver dry gas. Separation

also removes at least some of [759] the condensate or distillate which under the contracts may be recombined by Applicants with the gas stream after the gas has been metered for off-shore delivery for transportation by Tennessee to shore and delivery to Applicants without charge. Tennessee's witness testified to the effect that if the Applicants did not remove at least some of the distillate before it was pipelined, Tennessee would have to do so, and further, Tennessee will pay only for the residue gas as remetered at Applicants' onshore processing plant.

The gas is fairly normal Miocene production and is very dry, having a low distillate or condensate content varying from 6 to 11 barrels per 1,000 Mcf, and consequently small shrinkage in volume is expected, i.e., something less than 5% of the stream. Further the flexibility capacity-wise reflected in the design of the lateral line for normal gas operations and the infrequency with which Tennessee would be depleting the reserves here involved, at the maximum rate, make it appear that the real effect cost-wise to Tennessee of the transportation for Applicants, as well as any appropriate disposition with respect thereto, cannot now be determined. This burden will, in any event, have no immediate effect upon Tennessee's rates to jurisdictional customers and can be further considered at such time as operations commence or rate effects become apparent.

[760] The Relation of Tennessee's Application in Docket No. G-11,107

The facts of this proceeding indicate that these reserves are important to Tennessee's expansion and it is known

that the demand for natural gas is almost everywhere in excess of that available from pipeline systems. However, any finding to the effect the public convenience and necessity requires or will require the issuance of certificates to Applicants in this proceeding would be confronted with the fact that a contrary finding made with respect to Tennessee's application for a certificate which is pending in Docket No. G-11,107 would be in fact in conflict as Tennessee proposes to use the reserves which are the subject of this proceeding in connection with its expansion program which is the subject of its application in G-11,107.

The findings and order will therefore be qualified and conditioned upon a certificate being issued to Tennessee in G-11,107 or otherwise, covering facilities necessary to the taking of gas from Applicants into Tennessee's main line system.

FURTHER FINDINGS AND CONCLUSIONS

(1) Applicants, independent producers of natural gas, upon commencement of the sales authorized herein, will be engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission, and each will, therefore, be a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The sales of natural gas hereinbefore described, as more fully described in the applications, will be made in interstate commerce, subject to the jurisdiction of the Commission, and such sales by

Presiding Examiner's Decision Upon Applications for Certificate of Public Convenience and Necessity, Filed Pursuant to Section 7 (c) of the Natural Gas Act, Docket Nos. G-11024, et al., Issued March 29, 1957

Applicants, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicants are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

[761] (4) Assuming the issuance to Tennessee by the Commission of an appropriate certificate for the construction of facilities enabling it to take delivery of Applicants gas into its (Tennessee's) main line system and sales of natural gas by Applicants, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the public convenience and necessity, and certificates should be issued as hereinafter ordered and conditioned.

ORDER

Upon consideration of the record herein, the contentions and briefs of counsel, and for the reasons and upon the findings and conclusions set forth in the foregoing portions of this decision, of which this order is a part,

IT IS BY THESE PRESENTS ORDERED, subject to review by the Commission on appeal, or on its own motion, as provided by its Rules of Practice and Procedure, that:

Presiding Examiner's Decision Upon Applications for Certificate of Public Convenience and Necessity, Filed Pursuant to Section 7 (c) of the Natural Gas Act, Docket Nos. G-11024, et al., Issued March 29, 1957

(A) That certificates of public convenience and necessity be and are hereby issued, upon the terms and conditions of this order, authorizing the sales by Applicants of natural gas in interstate commerce for resale, together with the construction and operation of any facilities, subject to the jurisdiction of the Commission, used for the sales of natural gas in interstate commerce, as hereinbefore described and as more fully described in the applications and exhibits in this proceeding.

(B) That certificates issued herein shall be deemed accepted and of full force and effect, unless refused in writing and under oath by Applicants within 30 days from issuance of this order.

(C) That certificates are not transferable and shall be effective only so long as Applicants continue the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act, and the applicable rules, regulations and orders of the Commission.

[762] (D) That the grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or of Section 154 of the Commission's Rules and Regulations thereunder requiring the filing of rate schedules for the services herein authorized, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or

hereafter instituted by or against the Applicants. Further, the action in this proceeding shall not foreclose nor prejudice any future proceedings or objection relating to the operation of any price or related provision in the gas purchase contracts herein involved.

(E) The question of such transportation and proper charge therefor not being presently before the Commission, the issuance of this order shall not be construed as recognition of any claim by Applicants of an obligation on the part of Tennessee to transport liquids for the account of Applicants.

(F) This certificate is conditioned upon the granting by the Commission of a certificate to Tennessee authorizing the construction and operation of facilities enabling Tennessee to take deliveries of gas from Applicants herein into Tennessee's main line system.

EWING G. SIMPSON
Ewing G. Simpson
Presiding Examiner

Filed: March 29, 1957
Issued: March 29, 1957

Errata Notice, Dated April 1, 1957 Correcting Decision Last Above, Docket Nos. G-11024, *et al.*

• • •

[763] ERRATA NOTICE

(April 1, 1957)

DECISION
UPON APPLICATIONS FOR CERTIFICATES OF PUBLIC CONVENIENCE AND NECESSITY, FILED PURSUANT TO SECTION 7 (c) OF THE NATURAL GAS ACT

Page 7, Line 9,	Change "the" to "no"
Page 8, Line 16,	Change side heading "The Merits" to center heading
Page 8, Line 29,	Add "," after "others"
Page 10, Fn. 9	Change "the contracts" to "each contract"
Page 12, Line 25	Change "connote" to "connate"
Page 13, Line 10	Change "15.02 psia" to "15.025 psia"
Page 18, Line 11	Delete "in fact"
Page 18, Line 24	Change "jursidiction" to "jurisdiction"
Page 18, Line 29	Change "jursidiction" to "jurisdiction"
Page 19, Line 3	Change "Applicants" to "Applicants'"

EWING G. SIMPSON
Ewing G. Simpson
Presiding Examiner

• • •

Order Denying Motion for Rehearing and Abrogation, Request for Oral Argument, Motion to Consolidate and Fixing Time for Filing Exceptions, Docket Nos. G-11024, *et al.*, Issued March 29, 1957

* * *

[764] Continental Oil Company (Continental), The Atlantic Refining Company (Atlantic), Cities Service Production Company (Cities Service), and Tidewater Oil Company (Tidewater), hereinafter collectively referred to as Applicants, have heretofore filed as independent producers in Docket Nos. G-11024, G-11034, G-11046, and G-11049, respectively, separate applications for certificates of public convenience and necessity, pursuant to Section 7 (c) of the Natural Gas Act, authorizing Applicants to sell natural gas in interstate commerce from common sources located offshore Louisiana to Tennessee Gas Transmission Company (Tennessee) for resale.

Notice of the filing of these applications, together with their consolidation for the purpose of hearing, was issued by the Secretary on October 3, 1956. Pursuant to further notice issued by the Secretary on February 8, 1957, a public hearing was commenced on February 28, 1957, respecting the matters involved in and the issues presented by these applications. At the conclusion of the hearing on March 1, 1957, counsel for Tidewater moved orally on the record in behalf of all of the Applicants that the intermediate decision procedure be waived. This motion was concurred in by all parties of record present and staff counsel. By order issued March 8, 1957, the Commission denied motion for omission of the intermediate decision procedure.

On March 18, 1957, Atlantic and Cities Service jointly filed a request for abrogation and rehearing of the order of the Commission denying said motion for omission of the intermediate decision procedure and, in the alternative, that the Commission fix the time for filing exceptions to

the initial decision in this proceeding at a date not to exceed the date of issuance of such initial decision by 5 days. On March 20, 1957, Tennessee filed an application for reconsideration and oral argument of said order of the Commission. On March 22, 1957, the Public Service Commission of the State of New York (New York Commission) filed an answer to the aforesaid request of Atlantic and Cities Service.

[765] Tennessee and these Applicants argue, in essence, that a certificate of public convenience and necessity, if issued in this proceeding, must be issued no later than April 1, 1957. In support thereof, it is stated that a failure to have the leases involved on production by 1958 would place them in jeopardy because of the obligations contained in the leases, the Outer Continental Shelf Lands Act, and the rules and regulations thereunder; that the only practical way of placing these leases on production is by constructing a marine or underwater pipeline to the wellheads which are located on platforms out in the Gulf of Mexico; that the only feasible time within which to construct such a line is in the spring and early summer (of 1957) in order to avoid the adverse effects of the late summer-early fall hurricane season and wave conditions from a working condition as well as a cost viewpoint; that the gas sales contracts involved provide for the commencement of deliveries on or before November 1, 1957; and that ordinary prudence required Applicants to reserve the right to cancel the gas sale contracts if satisfactory certificates were not issued by April 1, 1957 in order that Applicants might have a margin of time available within which to protect their substantial investments by making

Order Denying Motion for Rehearing and Abrogation, Request for Oral Argument, Motion to Consolidate and Fixing Time for Filing Exceptions, Docket Nos. G-11024, et al., Issued March 29, 1957

alternative arrangements for the disposition of the gas involved. In its answer, the New York Commission urges the denial of the motion to abrogate, objects to the request that only 5 days be allowed within which to file exceptions on the ground that it would result in a virtual deprivation of the right to file exceptions, and denies any inference that has been raised to the effect that it supported the motion for omission of the intermediate decision procedure.

Neither Applicants, Tennessee nor the New York Commission present any arguments or facts not heretofore considered by the Commission in reaching its decision in the aforesaid order denying the motion for omission of the intermediate decision procedure.

On March 1, 1957, the New York Commission, a participating intervener in the instant consolidated proceeding, filed a motion to consolidate said proceeding with the prospective proceeding[1] upon the application of Tennessee in Docket No. G-11107[2] on the ground that the economic feasibility of Applicants' project in the instant proceeding [766] is inextricably bound up with Tennessee's proposals in Docket No. G-11107. Although Tennessee has shown in the instant proceeding the nature and extent of its proposed facilities, as well as the cost thereof, which are directly involved and necessary to take this gas into its existing system, the New York Commission argues in support of its motion that the ruling of the Presiding Ex-

[1] The notice of the filing of Tennessee's application in Docket No. G-11107 was issued on October 11, 1956 and fixed October 31, 1956 as the last day for filing protests or interventions.

[2] As a part of its application in Docket No. G-11107, Tennessee seeks authorization to take the gas involved in the instant proceeding into its existing system through the construction and operation of facilities necessary to pick up said gas at the wellheads located on offshore platforms in the Gulf of Mexico.

aminer that the interveners could not go into the subject of any facilities contained in Tennessee's proposals in Docket No. G-11107 which might be *indirectly* used or proposed to be so used by Tennessee to take the instant gas, makes it impossible for interveners to determine the economic feasibility of the instant and proposed sale of gas by Applicants to Tennessee. The New York Commission also suggests that the Commission has adopted a fixed procedure of consolidating so-called independent producer applications with related pipeline applications, or having separate but concurrent hearings upon such applications, or disposing of pipeline applications prior to those of independent producers.

Answers and objections to the aforesaid motion to consolidate were filed pursuant to Section 1.12 (c) of the Commission's Rules of Practice and Procedure by Atlantic and Cities Service, jointly, on March 20, 1957, by Tennessee on March 22, 1957, and by Tidewater in the form of a telegram on March 26, 1957. These Applicants and Tennessee state, in essence, that the instant proceeding is in its final procedural stage and only requires a determination, and that the New York Commission's motion to consolidate is without merit and is purely dilatory in nature.

The short answer to the contention of the New York Commission is that the Commission has not adopted a fixed procedure concerning the hearing of so-called related applications. In this connection, however, it is the fixed policy of the Commission, within scope of its Rules of Practice and Procedure, to hear and proceed upon so-called

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related applications pending before it in a manner and method which, in the opinion and discretion of the Commission, will best serve the public interest.

The final contention of the New York Commission is also without merit. The ruling of the Presiding Examiner as alleged by the New York Commission is to the effect that the instant hearing is not upon Tennessee's application in Docket No. G-11107 and that there is a reasonable limit which ought not to be exceeded, as to how far the interveners could go in this proceeding into the subject matter of the application filed in Docket No. G-11107. Such a ruling is obviously correct. Furthermore, the New York Commission timely filed a notice of intervention in Docket No. G-11107 on October 16, 1956. By order issued December 11, 1956 in Docket No. G-11107, the remaining interveners in the instant proceeding were permitted to intervene in Docket No. G-11107. Thus, all of the issues raised by Tennessee's application in Docket No. G-11107 will become the matters of hearing in Docket No. G-11107.

[767] *The Commission finds:*

(1) That good and sufficient cause has not been shown for granting the aforesaid motions for rehearing and abrogation, request for oral argument, motion to consolidate and request that the time for filing exceptions to the initial decision be fixed at a date not to exceed the date of issuance of such decision by 5 days, and, therefore, said motions and requests should be denied as hereinafter ordered.

(2) That it is in the public interest and sufficient cause has been shown to fix the time for filing exceptions to the

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initial decision at a date not to exceed the date of issuance of such decision by 10 days, and, therefore, such relief should be granted as hereinafter ordered.

The Commission orders:

(A) That the motions and requests described in Finding (1) hereof be and the same hereby are denied.

(B) That the time for filing exceptions to the initial decision be and the same hereby is fixed at a date not exceeding the date of issuance of decision by 10 days.

By the Commission.

J. H. GUTRIDE,
Joseph H. Gutride,
Secretary.

• • •

Exceptions of Long Island Lighting Company to the Initial Decision of the Presiding Examiner, Docket Nos. G-11024, *et al.*, Filed April 8, 1957

* * *

[791] The Long Island Lighting Company (Long Island) hereby makes and submits the following exceptions to the findings and conclusions of the Presiding Examiner set forth in his initial decision issued March 29, 1957, in the above entitled proceedings, and supports such exceptions as herein set forth:

1. Exception is taken to the finding and conclusions set forth on page 15 of the Examiner's decision as follows:

> "* * * Tennessee did not initiate the foregoing price comparisons and no real effort was made by intervenors to adequately support them. In any event, to permit such an exploration in this proceeding would simply invite the opening up of the whole subject of the validity of all rates entering into the comparison, viz, not only the prices here immediately involved, but the rates charged in the West Delta area (15), and the others mentioned. This is more than the Act requires [792] or intends in a Section 7 certificate proceeding, such as here, where public convenience and necessity is inherently the basic issue, certainly in the absence of any showing of imprudence or of abuse of discretion by management.
>
> "Therefore, assuming management has discretion, within its proper range, to make a selection as to sources of gas supply, and, in the absence of any substantial indication in the evidence or even serious claim by intervenors that the initial cost of gas by itself would necessarily lead to an increase in Tennessee's rates to jurisdictional customers, no grounds appear for permitting this case under

Section 7 of the Act to assume the character of a rate proceeding under Section 5(a) thereof."

Said findings and conclusions of the Examiner are in error as contrary to the facts of record in this proceeding and contrary to the law with respect to the issuance of certificates of public convenience and necessity.

In support of such exception Long Island sets forth the following:

The basic issue in a certificate proceeding is whether the proposed service is in the public interest. If the proposed service or gas sales are not in the public interest, then the certificate sought is not required by the public convenience and necessity irrespective of whether the applicant is able and willing to perform the service and conform to the provisions of the Natural Gas Act and the rules and regulations of the Commission.

The courts have held that the primary purpose of the Natural Gas Act is the protection of consumers. This basic purpose of the Act [793] cannot be fulfilled in producer and pipeline certificate cases, unless the Commission in determining whether the proposed service is in the public interest considers not only the need for the additional gas, but also the effect of the proposed service on the pipeline's rates. If the Commission in passing upon certificate applications only considers the need for additional gas it cannot make a proper lawful determination that the proposed service is in the public interest.

The Examiner is in error in finding and concluding that the effect of the proposed service on Tennessee's rates is not an issue to be considered and determined by the Commission in this certificate proceeding in arriving at

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the fundamental conclusion the Commission must make that the proposed service is in the public interest.

The Examiner is also in error in finding and concluding that there is no claim by the intervenor, Long Island Lighting Company, that the initial cost of this gas by itself would necessarily lead to an increase in Tennessee's rates to jurisdictional customers.

In its initial memorandum (joint memorandum filed on behalf of Long Island and Brooklyn Union), Long Island stated:

> "For the first full year of operation under the application as filed by Tennessee in Docket No. G-11107, the year 1958, the new purchases of gas under the producer contracts would increase the weighted average cost of gas for Tennessee from 12.73 cents per Mcf to 13.70 cents per Mcf or [794] approximately 1 cent per Mcf (Tr. pp. 51-52). In view of the volume of Tennessee's total gas purchases this can scarcely be said to be an immaterial effect on Tennessee's overall cost of gas. • • •"

Long Island's clearly stated interest in these proceedings is the effect of the prices to be paid for this new gas on Tennessee's rates.

The Examiner is also in error in finding and concluding that there is an absence of "any substantial indication in the evidence" that the initial cost of this gas by itself would necessarily lead to an increase in Tennessee's rates to jurisdictional customers.

The evidence in this record, sketchy as it is, does establish that these proposed purchases of new gas do

mean an increase in Tennessee's cost of gas, and that the volumes of this new gas to be purchased by Tennessee will be a substantial part of Tennessee's total gas purchases. The record also discloses that the estimated cost of constructing the additional facilities that Tennessee proposes to build from the producing platforms to connect with its present system at Kinder, Louisiana, is $16,315,000. If the return, related income tax and operating expense for these facilities is considered the initial price of this new gas delivered into Tennessee's system would be further increased. This would be so whether the producers or Tennessee build and operate these facilities.

[795] It cannot be assumed or inferred as the Examiner has done that the additional costs and expenses to Tennessee that is indicated by the evidence in this record will be absorbed by Tennessee and not sought to be recovered by rate increases to its jurisdictional customers.

2. Exception is taken to the following findings and conclusions of the Examiner set forth on page 15 of his decision as follows:

> "Any attempt to add the Mcf cost of lateral line, pipe line, or gathering facilities directly to the price of gas at the offshore platforms for the purpose of arriving at some total Mcf cost of gas to Tennessee's system would simply involve the unwarranted assumption that any other addition of reserves, in lieu of those here involved, would not likewise entail the construction of additional facilities of like nature and of substantial size and proportionate cost."

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In support of this exception Long Island merely states that in *this* producer certificate proceeding the Commission is concerned with the price of *this* new gas to Tennessee as delivered into Tennessee's system through the facilities that will have to be constructed from the producing platforms here involved to Tennessee's system at Kinder, Louisiana. The Commission cannot disregard in this proceeding the additional cost per Mcf of moving this gas from the producing platforms to Tennessee's system, by assuming as the Examiner has done that if these certificates are not granted Tennessee will have to pay an equal price per Mcf for moving other gas that it may purchase in the future from other sources into its system. That price will be subject to investigation and [796] determination by the Commission in future certificate proceedings but not in these present proceedings.

3. Exception is taken to the findings and conclusion of the Examiner as set forth on page 15 of his decision as follows:

> "Barring questions which cannot be resolved in this proceeding concerning Louisiana's title to the offshore shelf lands and the significance of a determination of title in Louisiana as to the possible seaward extension of parish lines with respect to the territorial scope of price provisions in Tennessee's onshore contracts, the opinion of Tennessee's operating officials is that the West Cameron, East Cameron and Vermilion areas constitute new pricing areas and that the price provisions of the contracts here involved will not trigger existing favored nations or renegotiation clauses in Tennessee's other

gas purchase contracts in its Southwest Louisiana pricing area nor, in fact, so affect any of Tennessee's other gas purchase contracts, and no participant made a showing to the contrary."

The Examiner is in error in eliminating as he does the possible triggering effect of the prices to be paid under these new contracts, the question as to Louisiana's title to the offshore shelf lands and the possible seaward extension of the parish lines. The Examiner is also in error in finding and concluding that no participant in these proceedings made a showing contrary to the claim of a Tennessee official that the price provisions in these new contracts would not trigger Tennessee's existing gas purchase contracts in its Southwest Louisiana pricing area.

In support of this exception Long Island states first that the evidence of record discloses that on cross-examination of Mr. Witmer [797] (the only Tennessee operating official who testified in these proceedings) by counsel for Long Island testimony was given that there may be a possible triggering effect on Tennessee's existing Southwest Louisiana contracts.

Mr. Witmer on cross-examination did testify that:

(a) Tennessee does have existing gas purchase contracts in Cameron and Vermilion Parishes (Tr. p. 174).

(b) These existing contracts do contain two-party favored nations and price redetermination clauses (Tr. p. 174).

(c) These clauses in existing contracts do operate in the Southwest Louisiana pricing area of Tennessee, consisting of seven parishes (Tr. p. 174).

Exceptions of Long Island Lighting Company to the Initial Decision of the Presiding Examiner, Docket Nos. G-11024, et al., Filed April 8, 1957

(d) The price presently paid by Tennessee under existing contracts in this pricing area is slightly over 10 cents per Mcf at a 15.025 pressure base (Tr. p. 175).

(e) The land covered by the leases here involved is within the offshore area in dispute between the Federal Government and the State of Louisiana (Tr. pp. 183, 115-116).

(f) Mr. Witmer did not know how far Louisiana was claiming title to the offshore lands, but supposed it was probably to the end of the Continental Shelf (Tr. p. 187).

[798] (g) Mr. Witmer did not know whether the Parish boundaries were co-extensive with the State boundary (Tr. p. 180).

(h) If as a result of the determination or settlement of the dispute between the Federal Government and the State of Louisiana the boundary line of the State was determined so that the leases fell within the State of Louisiana, the lease area might possibly be within the area covered by the favored nations clauses of Tennessee's existing contracts in Cameron and Vermilion Parishes (Tr. p. 181).

In further support of this exception reference is made to Long Island's joint initial memorandum, pages 21-27 and pages 1-6 of Long Island's joint reply memorandum.

4. Reference is made to the findings and conclusion of the Examiner at page 14 of his decision set forth as follows:

> "Intervenors have elicited from their examination of witnesses that, among other things, in the West Delta off-shore area, some 200 miles distant, Appli-

cants are selling gas to Tennessee at 17¢ per M.c.f., that Tennessee pays only slightly in excess of 10¢ per M.c.f., including the gathering tax, in its Southwest Louisiana pricing area; that Tennessee is not paying as high a price as 21.4¢ to any other producer under any contract; that the step escalation provided in the instant contracts were inserted in part at least, in lieu of favored nations and price redetermination clauses, and are the steepest of any such provisions in Tennessee's present gas purchase contracts." (Underscoring added.)

The Examiner is in error by omitting from the above findings and conclusions and from his entire decision any reference whatsoever to [799] a letter agreement dated August 17, 1956 (appearing in the transcript at pages 107-109), between Tennessee and each of the Applicants that was first disclosed at the hearing at the time of cross-examination of Staff Counsel. This heretofore undisclosed letter agreement provides that favored nations clauses and price redetermination clauses are to be written into the original contracts filed with the applications in this proceeding if either the Commission accepts and allows a producer rate resulting from the operation of such clauses in a similar contract or if by judicial decision or statute it is determined that the Commission has no jurisdiction over a producer's price charged to a gas transmission company such as Tennessee.

In other words, although the steep step escalations in these producer contracts in part were arrived at upon the consideration that the original contracts contained no favored nations or price redetermination clauses, a side

agreement provides for writing just such clauses into the original contract under certain conditions.

In further support of this exception reference is made to pages 12-15 of Long Island's initial joint memorandum and to pages 6-8 of Long Island's joint reply memorandum.

5. Exception is taken to the Examiner's Finding and Conclusion (4) appearing on page 19 of his decision and to the Examiner's order paragraph (A) also set forth on page 19 of his decision.

[800] Exception is taken to such findings conclusions and order paragraph for the reason that the Examiner is in error in finding and concluding that on the record in this proceeding as it stands at present, it can be properly and lawfully found and determined that the producer certificates sought herein are in the public interest and required by the public convenience and necessity. Further that the Examiner is in error in concluding as a matter of law that certificates of public convenience and necessity may be issued in these proceedings without any consideration being given to the effect of the prices to be paid under these contracts on Tennessee's rates and charges or the possible triggering effect of these new contract prices on Tennessee's existing contracts. Further, that the Examiner is in error in concluding and ordering that under the law and the evidence of record in this proceeding certificates of public convenience and necessity may issue to the Applicants in this proceeding.

In support of this exception Long Island sets forth the following:

The Commission in the Cities Service-Signal Oil and Gas Company proceeding (Docket No. G-2569—G-2570)

determined that the applicant-seller had the burden in a certificate case of proving all elements of its application so that the Commission may conclude that the service proposed is or may be required by the present and future public convenience and necessity. A vital element of such proof is concerned with the rates proposed. At page 19 of its opinion No. 288 the Commission stated:

> [801] "In this, a proceeding upon a certificate application, Signal as applicant-seller has the burden of proving all elements of its application so that we may conclude that the service proposed is or will be required by the present or future public convenience and necessity. A vital element of such proof is concerned with the rates proposed."

The rationale of the Commission's decision in this Signal case is that the effect of the prices proposed to be paid under the new contracts on the pipeline's rates must be shown and proved. The basic decision of the Commission is not confined solely to the effect on pipeline companies' rates resulting from the triggering effect of one small new contract on existing favored nations contracts. The effect on a pipeline's rates can be as great or greater as a result of single big contract for large quantities of gas at a price substantially in excess of any existing price of the pipeline. The vital element of the effect of the prices to be paid under the new producer contracts on the pipeline's rates must be shown in both situations.

In the present proceeding the effect of these proposed purchases of large quantities of new gas at admittedly the highest price paid by Tennessee in the whole southwest area of the country and substantially above the aver-

age price Tennessee is currently paying for all its gas, cannot be determined from the testimony of record. What evidence there is in the record does indicate that the prices paid under these new contracts, even absent any possible triggering of any existing contracts, will have a material effect on Tennessee's overall cost of gas.

[802] In addition the record does indicate that possible triggering may exist depending upon where the boundary of Louisiana is finally determined and whether the boundaries of Cameron and Vermilion parishes are co-extensive with the State boundary.

Where a new higher price plateau is presented for Commission approval and consideration, the Commission should at least require complete and adequate proof of the effect of these new contract prices on Tennessee's rates. Unless such evidence is presented in the proceeding the Commission cannot under the rationale of its Signal Oil decision determine the proposed sales by the Applicants in this proceeding are in the public interest.

In further support of all the exceptions previously set forth, reference is made to Long Island's initial joint memorandum and reply memorandum.

PROPOSED FINDINGS AND CONCLUSIONS

In lieu of the findings, conclusions and orders made by the Examiner, Long Island respectfully proposes the following Findings and Conclusions:

1. The Applicants in this proceeding have failed to present such evidence as will enable the Commission to determine the effect of the proposed sales of natural gas under Applicants' contracts with Tennessee on Tennessee's rates and cost of gas.

Exceptions of Long Island Lighting Company to the Initial Decision of the Presiding Examiner, Docket Nos. G-11024, et al., Filed April 8, 1957

[803] 2. The Applicants in this proceeding have failed to present such evidence as will enable the Commission to determine whether the price to be paid for the gas proposed to be sold to Tennessee under the Applicants' contracts with Tennessee submitted in support of the respective applications in this proceeding, will cause or result in an increase in the price to be paid by Tennessee under the provisions of its existing gas purchase contracts in Tennessee's Southwest Louisiana pricing area.

3. In the absence of such proof by the Applicants as is referred to in paragraphs 1 and 2 above the Commission is unable to find and determine that the Applicants' proposed sales of natural gas to Tennessee at the prices and under the conditions set forth in the respective contracts of the Applicants with Tennessee are in the public interest and required by the public convenience and necessity.

4. The proceedings are hereby reopened to permit the respective Applicants to present further proof as is referred to in paragraphs 1 and 2 above, and for such purpose a public hearing will be held in these reopened proceedings at a date and time to be fixed by the Commission.

If the Commission does not adopt such findings and conclusions submitted by Long Island, but instead grants the certificates of public convenience and necessity herein sought by the respective Applicants, Long Island in the alternative respectfully proposes that the Commission's [804] order granting such certificates contain the following conditions in addition to those proposed by the Examiner.

Exceptions of Long Island Lighting Company to the Initial Decision of the Presiding Examiner, Docket Nos. G-11024, et al., Filed April 8, 1957

1. That the Applicants' respective contracts with Tennessee as originally submitted with the respective applications to the Commission in these proceedings (Items A, B, C and D) shall not be amended or revised to include any favored nations, price redetermination or similar price escalation clauses.

2. That the contract prices under which the sales of gas involved in these proceedings by the Atlantic Refining Company and Tidewater Associated Oil Company to Tennessee shall be the subject of investigation by the Commission in the Section 5(a) proceedings instituted by the Commission's order of January, 1956, in Docket Nos. G-9283 and G-9284.

3. That the contract prices under which the sales of gas involved in these proceedings by Continental Oil Company to Tennessee shall be the subject of investigation by the Commission in the Section 5(a) proceedings instituted by the Commission in Docket No. G-9279.

With respect to the prices to be paid by Tennessee to Cities Service Production Company, if the Commission has not already instituted a Section 5(a) proceeding with respect to Cities Service Production Company rates, Long Island respectfully requests that the Commission promptly institute a 5(a) proceeding to investigate the justness and [805] reasonableness of the price to be paid by Tennessee

to Cities Service under the contract filed with the application in Docket G-11046.

Dated: April 5, 1957.

Respectfully submitted,

CULLEN AND DYKMAN
Attorneys for Long Island Lighting Company
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Edwin F. Russell
Robert B. Lisle
Of Counsel

• • •

Conditional Exception of the Atlantic Refining Company and Cities Service Production Company, Docket Nos. G-11024, *et al.*, Filed April 8, 1957

* * *

[808] Come now The Atlantic Refining Company (Atlantic) and Cities Service Production Company (Cities Service) and tender the following conditional exception to the Decision of the Presiding Examiner, issued herein on March 29, 1957, all in accordance with § 1.31 of the Commission's Rules of Practice and Procedure (18 CFR 1.31):

I

Atlantic and Cities Service refer to the discussion of the relationship between the applications of the four independent producers, here involved, and the certificate application of Tennessee Gas Transmission Company (Tennessee) at Docket No. G-11107, appearing in the Decision of the Presiding Examiner (mimeo. ed. 18). Reference is also made to the following Ordering Paragraph (F) of the order appended to such Decision (mimeo. ed. 20):

> "(F) This certificate is conditioned upon the granting by the Commission of a certificate to Tennessee authorizing the construction and [809] operation of facilities enabling Tennessee to take deliveries of gas from Applicants herein into Tennessee's main line system."

It obviously is physically impossible for the independent producers to effect deliveries to Tennessee, in the manner here proposed, until facilities have been constructed to connect the producing wells with Tennesseee's existing system. Tennessee cannot build such facilities without authorization therefor.

Tennessee seeks such certificate authority at Docket No. G-11107. Also, it applied for a temporary certificate on March 1, 1957. We interpret the foregoing Ordering Paragraph (F) as being concerned solely with assuring that the

independent producer Applicants, here involved, can meet that part of the statutory test in § 7(e) of the Natural Gas Act which requires that an applicant demonstrate that it is "able" and willing properly to do the acts and to perform the service proposed in its application. Prompt issuance to Tennessee of a temporary certificate at Docket No. G-11107 would authorize Tennessee to construct and operate the facilities necessary to enable Tennessee to take deliveries from Applicants herein. Under our view, therefore, the foregoing Ordering Paragraph (F), and the purpose underlying the same, would thus be fully satisfied.

If more than this is contemplated by such Ordering Paragraph (F), contrary to our view, we address an exception to the same. On March 29, 1957, the same day as that on which the Decision of the Presiding Examiner was issued, the Commission issued its "Order Consolidating Proceedings and Fixing Date of Hearing," in *Re American Louisiana Pipe Line Company, et al.*, Docket Nos. G-2306, *et al.* Among [810] the large number of dockets thus consolidated was *Re Tennessee Gas Transmission Company*, Docket No. G-11107. This order is extraordinary in its length and complexity. It may reasonably be anticipated that a long period of time will elapse before the Commission finally disposes of the applications involved in these consolidated proceedings. Obviously, satisfaction of the foregoing Ordering Paragraph (F) cannot be accomplished in a timely manner, if it is to be postponed until final disposition of the entire application at Docket No. G-11107, which comprehends far more than merely the facilities necessary to enable Tennessee to take deliveries of gas from Applicants herein. To postpone until such time the validation of the certificates issued to the independent producer Applicants, or to hold that they may be

jeopardized by action then taken, would threaten the entire offshore project, with which we are here concerned. If, contrary to our view, this possible result is anticipated by Ordering Paragraph (F), we hereby except to the same, and urge that it be stricken in its entirety.

Respectfully submitted,

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Attorneys for
CITIES SERVICE PRODUCTION COMPANY
By /s/ Bernard A. Foster, Jr.
Bernard A. Foster, Jr.

Dated at Washington, D. C.,
this 5th day of April, 1957.

• • •

Exceptions of New York Public Service Commission to Decision of Presiding Examiner, Docket Nos. G-11024, *et al.*, Filed April 8, 1957

* * * *

[815] The Public Service Commission of the State of New York, an intervenor in the above-entitled proceedings, hereby takes exception to the Decision issued by the Presiding Examiner herein on March 29, 1957.

I

THE SALES ARE NOT IN THE PUBLIC INTEREST

We specifically take exception to Finding (4) on page 19 of the Decision—that the sales of natural gas by Applicants "are required by the public convenience and necessity"—which finding is predicated in large measure upon the discussion of price on pages 14 to 15 of the Decision and, insofar as that discussion includes any findings of fact in support of Finding (4), we specifically except to them as well.

[816] This entire Exception raises the issue as to what extent a proposed initial price is to be considered in an independent producer certificate case. In its *Signal Oil decision*, Opinion #288 issued November 28, 1955, the Commission held that it could and would, in appropriate cases, condition the issuance of a certificate upon the filing by the producer of a price lower than that called for in the initial contract. The *Signal Oil* decision was affirmed by the Court of Appeals for the Third Circuit, 238 F. 2d. 771 and only this week, the Supreme Court denied certiorari.

In the instant case, the price involved would be *the highest price ever paid for natural gas in the entire Southwest.* The gas is to be sold under contracts which contain *the steepest step escalation provisions ever written into a gas purchase contract.* Notwithstanding, in this

proceeding, the Examiner *excluded* evidence "which would enable the Commission to determine the justness and reasonableness of the proposed rates" (Staff Brief 15-16). Although the preparation of a field price study is being carried on jointly by the producers and the Commission Staff and is, according to Commission order issued in another case, to be ready within the next few weeks, the Examiner refused to permit the record to remain open to receive such data. If the Commission is to insist in a case like the instant one that it should not apply its *Signal* doctrine and condition an initial price unless there is in the record evidence of the precise going price, then it is clear that the Examiner committed prejudicial error in these rulings. On the other hand, since it is a matter of common knowledge that the price here [817] proposed *is* the highest price ever proposed to be paid for gas in the Southwest, we submit that the Commission can and should on the basis of the record as it *now* stands, condition the certificates upon the filing of a lower price.

The Examiner's observations on page 14—that "initial or other prices paid by other interstate pipelines in long term contracts in onshore areas equal or exceed 20¢ per Mfc" and that "steep step escalations are not unknown in interstate pipeline contracts"—are both only unsupported, gratuitous rationale. There is no evidence in this record of any contract between an interstate pipeline company and a producer calling for an initial price of over 20¢ for which a certificate has been granted. And as for step escalations, the only pertinent evidence is the testimony of a witness (Witmer) that he knew of no contract calling for step escalations of as much as 5 mills per annum,

(Tr. p. 254). In that light, what we have here is not step escalations, it's rocket-powered projection!

As for the finding in the second paragraph of page 14—"it is estimated that the weighted average cost of all gas to Tennessee in 1958 will be some 13.70¢ per Mcf as compared with 12.73¢ if the gas here proposed to be purchased is excluded"—it is pointed out that the estimator referred to (the witness Witmer) was unable to produce the figures from which the 12.73¢ and 13.70¢ had been derived; he refused to make his working papers available; and, although requested to do so, the Examiner declined to direct him to [818] produce them. Of course, we think that a 1¢ per Mcf increase in the average cost of all gas to Tennessee (whether wrought by this single purchase or otherwise) represents an enormous amount of money. It will total in excess of $7,000,000 annually. As representatives of those who will ultimately pay it, we take marked exception to the Examiner's relegation of that effect of this sale to the limbo of *de minimus*.

Finally, under this point, the Examiner states that the interveners made no effort adequately to support the validity of the comparison between the sale price herein and other sale prices in the Southwest; that they failed to prove that the initial price of the gas here involved would lead to an increase in Tennessee's rates; and that they failed to prove that these contracts would trigger favored nation clauses in Tennessee's existing contracts.

These statements, at page 14 and 15, simply demonstrate complete misconception of the burden of proof. The burden of sustaining the propriety of these sales rests upon the applicants—not the interveners.

Exceptions of New York Public Service Commission to Decision of Presiding Examiner, Docket Nos. G-11024, et al., Filed April 8, 1957

Approval of the sales herein would not merely increase the gas purchase price in a particular pricing area, as was the situation in the *Signal* case, but would also establish as the minimum for a new area—with concomitant pressures on prices in other areas—a price unprecedented in the entire course of natural gas regulation to date. To allow such a price to become effective without requiring more justification therefor than [819] this record contains is but to abandon—not protect—the consumer, for whom, we still insist, the Natural Gas Act was designed.

II

THE EVIDENCE DOES NOT SUPPORT THE FINDING OF WILLINGNESS AND ABILITY TO PERFORM.

Exception is taken to that portion of Finding (3) at page 18, and the discussion at page 8, paragraph 4, of the Examiner's Decision, to the effect that applicants are ready, willing and able to carry out their contracts.

The only evidence relied on to support the finding of willingness and ability to perform is the testimony of the witness McKinley. That witness, according to his own testimony, was *not* responsible for negotiating the contracts, is *not* familiar in any detail with their terms, and is *not* responsible for carrying their provisions into effect. His understanding of the term willingness and ability to perform is that it means the possession of large quantities of money. (Tr. 94-96)

In the face of the foregoing, the Examiner's Decision accepts as fact the witness' conclusion as to willingness

and ability to perform, (admittedly arrived at on the basis of advice from other unnamed persons) on the theory that the witness' duties [820] and responsibilities with Continental add probative value to his conclusion. The record in no way indicates that this witness' duties and responsibilities are such as to provide him with knowledge of the ability of any of the applicants to perform their obligations under the contracts.

III

THE NEED FOR URGENT DISPOSITION OF THESE APPLICATIONS HAS NOT BEEN SUBSTANTIATED.

Specifically under this point we except to the findings (a) at page 9, paragraph 2, of the Decision that "It satisfactorily appears, that in order to comply with the obligation of the leases and the Shelflands Act, production from the leases should commence by 1958", and (b) at page 11, paragraph 2, that otherwise Applicants' titles to their leases would be placed in jeopardy.

Assertions to this effect, together with reference to provisions in the contracts here involved, giving Applicants options to cancel in the event that "satisfactory" certificates of public convenience and necessity were not issued on or before April 1, 1957, have been advanced in explanation for the precipitous course of these proceedings since the initial hearing on February 28, 1957. The April 1 cancellation date came and went without incident. And, insofar as this record discloses, the arrival of [821] 1958 will similarly be uneventful as respects Applicants' titles. The Outer Continental Shelf Lands

Act (43 U.S.C.A., § 1335, sub. 10) contemplates termination of the leases ". . . in the absence of production *or* operations for drilling . . ." by 1958. The record here demonstrates "operations for drilling" involving in excess of 22 wells.

There is no basis whatever in this record upon which the above-specified findings may be supported. And, with or without such support, they do not justify the extreme haste with which these applications have thus far been disposed of, or the extreme consequences thereof as depicted in our Brief filed in this proceeding on March 14, 1957.

Conclusion

If the price of natural gas in Louisiana is to be increased, such an increase should come only in *rate* cases and upon demonstration that the increased price is just and reasonable. To permit price increases through the back door of a Section 7 proceeding, in the measure here demonstrated, simply leaves the consumer—who pays in any event—defenseless. The Section 4 and Section 5 procedures at least afford him the solace that the agency established for his protection has determined the price exaction to be just and reasonable.

[822] The Commission should either reverse the decision of the Presiding Examiner and deny the applications or in the alternative should issue the certificates here sought, further conditioned as follows:

1. A requirement that the applicants renegotiate their contracts with Tennessee to provide for an initial price not to exceed 15.4¢ per Mcf (exclusive of tax reimbursement); and

Exceptions of New York Public Service Commission to Decision of Presiding Examiner, Docket Nos. G-11024, et al., Filed April 8, 1957

2. A requirement that the applicants renegotiate their contracts with Tennessee to provide for a step escalation not to exceed two mills per year.

We heartily concur in the only condition recommended by the Examiner—the grant of a certificate to Tennessee in G-11,107.

We respectfully request an opportunity for oral argument before the full Commission in support of the exceptions set forth herein and in support of the arguments set forth in our initial and reply briefs.

Respectfully submitted,

PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK

By /s/ KENT H. BROWN
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LAWRENCE M. DEVORE
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Of Counsel

Exception of Continental Oil Company and Tidewater Oil Company to Presiding Examiner's Decision, Docket Nos. G-11024, *et al.*, Filed April 9, 1957

* * *

[823] On March 29, 1957, the Honorable Ewing G. Simpson, Presiding Examiner in the above entitled and numbered dockets, issued the initial decision. The Commission by order issued on March 29, 1957, fixed the date for filing exceptions to the initial decision at a date not to exceed ten days after March 29, 1957.

The proposed order contains the following condition:

> "(F) This certificate is conditioned upon the granting by the Commission of a certificate to Tennessee authorizing the construction and operation of facilities enabling Tennessee to take deliveries of gas from Applicants herein into Tennessee's main line system."

As is set forth in the initial decision and as is further evidenced by the record and by the briefs [824] filed herein, it is essential that pipe line facilities be constructed during the spring and summer of 1957 to the Applicants' leases in the Cameron, West Cameron and Vermilion areas or the Applicants will face the loss of their leases. Tennessee Gas Transmission Company ("Tennessee"), the purchaser under the subject contracts, has heretofore filed its application in Docket No. G-11107 for authority to construct the necessary facilities to receive the gas from the Applicants in this docket. On March 1, 1957, Tennessee filed an application in Docket No. G-11107 for a temporary certificate to construct and operate said facilities.

In its "Order Consolidating Proceedings and Fixing Date of Hearing" issued on March 29, 1957, the Commission consolidated Docket No. G-11107 with some nineteen separate dockets involving, inter alia, competitive

Exception of Continental Oil Company and Tidewater Oil Company to Presiding Examiner's Decision, Docket Nos. G-11024, et al., Filed April 9, 1957

and mutually exclusive applications for service to the Chicago and other Midwestern areas. It is apparent from the aforesaid order of consolidation that the consolidated docket is one of great complexity [825] and that it is unreasonable to suppose that a final decision could be rendered in Docket No. G-11107 within any reasonable time as affects the situation of the Applicants herein.

Referring to Paragraph (F) of the proposed order contained in the initial decision, the Applicants feel that said condition is intended to be and will be satisfied by the granting of a temporary certificate or other temporary authorization authorizing the construction and operation of facilities enabling Tennessee to take deliveries of gas from Applicants in this docket into Tennessee's main line system. If such is not the case, then the certificate which has been issued to the Applicants is of no value to Applicants and cannot be accepted by them. Applicants will have in fact received no certificate which will enable them to commence deliveries of gas within such period of time as will prevent the loss of their leases. The effect would be to grant the motion of the New York Commission to consolidate the captioned dockets with Docket No. G-11107. This motion [826] was expressly denied by the order of the Commission dated March 29, 1957, in these captioned dockets. Thus, the recommended certificate would be in contradiction with the Commission's order.

If the granting of a temporary certificate or other authorization by the Commission to Tennessee, authorizing it to construct and operate the facilities necessary to take deliveries of gas from the Applicants in this docket,

Exception of Continental Oil Company and Tidewater Oil Company to Presiding Examiner's Decision, Docket Nos. G-11024, et al., Filed April 9, 1957

does not satisfy the conditions as set forth in said Paragraph (F), then the Applicants, in conformity with Section 1.31 of the Rules of Practice and Procedure, except to said condition contained in Paragraph (F) of the proposed order and ask that it be eliminated from the order. If such condition is not eliminated from the order or is not fully satisfied by the issuance of a temporary certificate or authorization to Tennessee as aforesaid, then the entire project will have been thwarted.

In view of the exigencies of the situation, it is respectfully requested that the Commission take [827] immediate action in the premises so that the construction of the pipe line facilities can be commenced instanter.

Respectfully submitted,

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By s/ GENE M. WOODFIN
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Attorney for CONTINENTAL OIL COMPANY

Dated: April 6, 1957

• • •

Exceptions of Public Service Electric and Gas Company to the Initial Decision of the Presiding Examiner, Docket Nos. G-11024, *et al.*, Filed April 9, 1957

* * *

[831] Public Service Electric and Gas Company (Public Service) hereby files its Exceptions to the findings and conclusions of the Presiding Examiner issued March 29, 1957, in the above-entitled proceedings, as follows:

1. The Examiner's decision (Page 15) is erroneous in that he did not apply the law set forth in the Cities Service-Signal Oil and Gas Company cases (Docket Nos. G-2569 and G-2570), and refused to consider the subject of the validity of the prices immediately involved.

2. The Examiner erred in finding that the contracts were entered into as a result of arms-length [832] bargaining, and he failed to consider the possible anti-trust violations involved.

3. The Examiner erred in finding that the evidence indicated that the Applicants are able and willing to do the acts and to perform the service proposed, and to conform to the provisions of the Act and the requirements, rules and regulations of the Commission.

4. The Examiner erred in that he found as a fact that the present and future public convenience and necessity required the issuance of certificates of convenience and necessity.

5. The Examiner erred in that he did not attach to the issuance of the certificate a rate condition which would require that the proposed sales be made at such lower price which would protect the interest of the consumers.

6. The Examiner erred in that he found that the effect of the proposed service on Tennessee's rates is not an

Exceptions of Public Service Electric and Gas Company to the Initial Decision of the Presiding Examiner, Docket Nos. G-11024, et al., Filed April 9, 1957

issue to be considered in this certificate proceeding, and in concluding that there was no substantial indication in the evidence that the initial cost of the gas would lead to an increase in Tennessee's rates.

7. The Examiner erred in that he found that Tennessee would have to pay an equal price for moving [833] other gas that it might purchase from other sources into its system in the event that these certificates were not granted.

8. The Examiner erred in disregarding the possible triggering effect of the prices to be paid under these new contracts.

In support of the Exceptions set forth, Public Service relies on its Brief and Reply Brief filed in these consolidated dockets. Public Service requests an opportunity to present oral argument in support of its Initial and Reply Briefs and in support of the Exceptions herein made.

Respectfully submitted,

(Signed) Edward S. Kirby
Edward S. Kirby
Attorney for Public Service
Electric and Gas Company

Dated: Newark, New Jersey
April 8, 1957.

* * *

Application of Continental Oil Company, The Atlantic Refining Company, Cities Service Production Company and Tidewater Oil Company for Rehearing, Docket Nos. G-11024, *et al.*, Filed May 6, 1957

* * *

[853] Come now Continental Oil Company, The Atlantic Refining Company, Cities Service Production Company, and Tidewater Oil Company (Applicants), and jointly tender this, their application for rehearing of the Commission's "Findings and Order Issuing Temporary Certificates of Public Convenience and Necessity," issued in the above-entitled proceedings on April 22, 1957, petitioning the Commission that it modify such order as proposed hereinbelow. As grounds in support of these requests, Applicants show as follows:

I

This application is filed pursuant to the Natural Gas Act, including particularly § 19(a), and to the Commission's Rules of Practice and Procedure, including particularly § 1.34.

II

The exact legal name of each Applicant, together with the names and addresses of persons to whom communications are to be sent concerning this application are:

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Application of Continental Oil Company, The Atlantic Refining Company, Cities Service Production Company and Tidewater Oil Company for Rehearing, Docket Nos. G-11024, et al., Filed May 6, 1957

CITIES SERVICE PRODUCTION COMPANY
Cecil C. Cammack, Esquire
Cities Service Production Company
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TIDEWATER OIL COMPANY
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III

By its order of April 22, 1957, the Commission issued temporary certificates authorizing sales by Applicants to Tennessee Gas Transmission Company (Tennessee), and also a temporary certificate to Tennessee with respect to construction [855] of the offshore facilities which would connect with facilities of Applicants. Paragraph (F) of that order required unconditional acceptance, within 15 days, of the temporary certificates as conditioned by said order. One such condition remanded the proceedings to the Presiding Examiner to determine at some unspecified later date, "at what rate the public convenience and

necessity" require the sales by Applicants to Tennessee, "if" Applicants are "granted permanent certificates."

In pursuance of their manifest and persistent efforts to make the large reserves of natural gas, here involved, available to the interstate market, Applicants have given extended, thoughtful, and deliberate consideration to the aforesaid Commission order of April 22, 1957. As a result, Applicants have concluded that the nature and extent of the economic risk is such as to foreclose their acceptance of the aforesaid temporary certificates.

IV

The Commission in its order stated in part:

> "The examiner has found there is a need for those volumes of gas on the system of Tennessee Gas, and that the applicants are ready and able to deliver them and take them, respectively. These findings we adopt. They argue conclusively that the sale is necessary in the public interest. All that remains for disposition is a determination as to the rate level at which the public convenience and necessity requires them to be made. Compelling reasons prevent us from postponing making these volumes available, however, until such time as the determination has been made."

[856] While the order does not expressly contemplate a hearing to determine "a just and reasonable rate," safety would require that Applicants introduce evidence of the types appropriate in such a hearing. Applicants could not present such evidence within any reasonable period in

Application of Continental Oil Company, The Atlantic Refining Company, Cities Service Production Company and Tidewater Oil Company for Rehearing, Docket Nos. G-11024, et al., Filed May 6, 1957

the future. This fact alone would prevent the concluding of such hearing prior to the date that deliveries must commence under the contracts. The parties cannot afford to commence construction until at least the initial rate is resolved.

V

The Commission stated erroneously, we believe, that the record did not contain sufficient testimony upon which to base a finding that the public convenience and necessity required the sale of the volumes of gas involved in these applications at the prices proposed. The sales contracts involved provide an initial price of 21.4¢ per Mcf, with tax reimbursement of 1¢ per Mcf. Such contracts also provide for a fixed-price escalation of 2¢ every four years.

The initial price here is only 1.4¢ per Mcf higher than the initial price in a number of sales previously certificated by the Commission in Southern Louisiana, a difference more than justified by the fact that the instant sales are made possible by costly offshore operations. Indeed, with the step escalation applicable in such other contracts, the prices there provided for to be effective at the time when Applicants [857] are scheduled to commence deliveries to Tennessee are not significantly different from the initial price provided for here. On the record here, there can be no issue of real substance as to the initial price. In any event, this is the price which the Natural Gas Act contemplates will be fixed by contract in the first instance. *United Gas Pipe Line Co.* v. *Mobile Gas Service Corp.*, 350 U. S. 332 (1950).

At the time of the hearing, and in the briefs of the Applicants, it was pointed out that the Commission had

and does have continuing control over the contract prices to be charged. Since the hearings and the filings of briefs herein, there has been introduced in the 85th Congress, the Harris bill, H.R. 6790. Under such proposed legislation, as applied to the facts of this case, it now appears that the Commission might possibly lose continuing supervision over the future prices provided for in the several contracts, as matters now stand. To prevent this, Applicants are willing to acquiesce in steps to insure that the future prices here provided may be tested under either the applicable rate provisions of the present law, or the reasonable market price standard proposed in the Harris bill, if the latter be enacted.

VI

If permanent certificates are issued to Applicants at this time, it is submitted that the Commission will be vested with ample means of protecting the public interest, under existing law, through its powers under §4 and §5 of the [858] Natural Gas Act. Indeed, rate investigations are currently underway with respect to most of the Applicants here involved.

If the Harris bill should be enacted into law, the Commission would be vested with ample means of protecting the public interest. The initial price would be in conformity with other prices in Southern Louisiana heretofore certificated by the Commission, and under Applicant's proposal hereinafter set forth, the future price provisions of the contracts would be tested under the reasonable market price provisions of the Harris bill.

Application of Continental Oil Company, The Atlantic Refining Company, Cities Service Production Company and Tidewater Oil Company for Rehearing, Docket Nos. G-11024, et al., Filed May 6, 1957

VII

To achieve the results suggested above, Applicants request that the Commission modify the aforesaid order of April 22, 1957, so as to issue forthwith a permanent certificate to each applicant, conditioned to require that, within 20 days after the issuance of the order, each Applicant file with the Commission a duly executed amendment to its applicable gas sales contract with Tennessee, containing the following language:

> If and in the event that H.R. 6790 or any substantially identical legislation is enacted into law by the 85th Congress, and becomes effective, then the provisions of Section 10, *Prices,* commencing with the portion thereof reading
>
> "From the date of initial delivery or November 1, 1, 1957, whichever occurs first, until November 1, 1962 .....21.4 Cents per MCF"
>
> to and including that portion thereof reading
>
> "From November 1, 1986 to expiration of this contract .....35.4 Cents per MCF"
>
> is hereby deleted, and the following is substituted in lieu thereof:
>
> [859] "From the date of initial delivery or November 1, 1957, whichever occurs first, and thereafter ..... 21.4 Cents per MCF
>
> Provided that, After November 1, 1962, Seller shall be entitled to receive and Buyer shall pay the rea-

sonable market price, if higher than 21.4 cents per Mcf, for the gas at the points of delivery within the limitations and subject to the terms and conditions as hereinafter set forth. Such reasonable market price shall be that as fixed by the Federal Power Commission under applicable law, after initial determination thereof by Seller as herein provided. If Seller should determine that the reasonable market price for the gas at the points of delivery for any of the 4-year periods hereinafter listed would be in excess of the price then being paid hereunder, Seller may notify Buyer, not less than eight months prior to the commencement of such period, of the price to be paid by Buyer hereunder during such period and until a subsequent determination by Seller in accordance herewith is made effective. Any price so determined and fixed shall be not less than 21.4¢ per Mcf and not more than:

23.4 Cents per MCF	From November 1, 1962 to November 1, 1966
25.4 Cents per MCF	From November 1, 1966 to November 1, 1970
27.4 Cents per MCF	From November 1, 1970 to November 1, 1974
29.4 Cents per MCF	From November 1, 1974 to November 1, 1978;

and, in the event the term of this contract is extended hereunder beyond November 1, 1978, then not more than

31.4 Cents per MCF ..... From November 1, 1978 to November 1, 1982
33.4 Cents per MCF ..... From November 1, 1982 to November 1, 1986
35.4 Cents per MCF ..... From November 1, 1986 to the expiration of this contract."

Except as altered hereinabove, the provisions of Section 10, *Prices*, shall remain unaffected and in full force and effect.

VIII

[860] Tennessee has informed Applicants that it is agreeable to the foregoing proposal and that it will enter into such an amendment with each of the Applicants.

IX

WHEREFORE, for all of the foregoing reasons, Applicants urge that the Commission forthwith amend its order issued herein on April 22, 1957, all in the manner detailed hereinabove.

Respectfully submitted,

CONTINENTAL OIL COMPANY
By /s/ ROLAND B. VOIGHT
Roland B. Voight

Application of Continental Oil Company, The Atlantic Refining Company, Cities Service Production Company and Tidewater Oil Company for Rehearing, Docket Nos. G-11024, et al., Filed May 6, 1957

THE ATLANTIC REFINING COMPANY
By /s/ BERNARD A. FOSTER, JR.
Bernard A. Foster, Jr.

CITIES SERVICE PRODUCTION COMPANY
By /s/ BERNARD A. FOSTER, JR.
Bernard A. Foster, Jr.

TIDEWATER OIL COMPANY
By /s/ GENE M. WOODFIN
Gene M. Woodfin

Dated at Washington, D. C.,
this 4th day of May, 1947.

(Sworn to May 4, 1957)

• • •

Answer of Public Service Electric and Gas Company to the Motion for Modification of the Commission's Order Issued April 22, 1957, Docket Nos. G-11024, *et al.*, Filed May 14, 1957

* * *

[873] Public Service Electric and Gas Company (Public Service), by way of answer to the Motion filed as an Application for Rehearing in the within Dockets, which application has been accepted for filing as a motion, says that:

1. This ingenious application, if granted, would effectively nullify the Commission's Order issued April 22, 1957, and would deny the right of this Intervenor, which has been recognized in the Commission's Order, to have the question of the reasonableness and justness of the proposed prices for the proposed sales to Tennessee Gas Transmission Company determined after a hearing, whereby the rights of [874] consumers to an adequate supply of natural gas at reasonable prices will be protected.

2. The attempt of the Applicants to have the Commission issue an order grounded on proposed legislation now the subject of hearings before a Committee of the Congress is clearly unlawful and would violate the rights of this Intervenor under the Natural Gas Act.

WHEREFORE, Public Service respectfully requests that Commission summarily deny the Motion which is entitled "Application for Rehearing".

Respectfully submitted,

(Signed) EDWARD S. KIRBY
Edward S. Kirby
Attorney for Public Service
Electric and Gas Company
80 Park Place
Newark 1, New Jersey

Dated: Newark, New Jersey
May 13, 1957.

* * *

Answer of New York Public Service Commission to Applicants' Motion Dated May 6, 1957, Docket Nos. G-11024, *et al.*, Filed May 16, 1957

* * *

[876] By application dated May 6, 1957 the applicants have requested rehearing of the Commission's order issued on April 22, 1957 in the above-entitled proceedings. The application has been accepted as a "motion for modification" of the said order.[1]

In essence, the applicants seek rescission or revocation of the April 22, 1957 order which granted the CATCO group and Tennessee temporary certificates and remanded the proceedings for a determination of the rate required by public convenience and necessity, and request the Commission to enter an order, on the basis of a proposed amended contract, granting permanent certificates for the sales at prices specified in the contract as amended.

[877] The amended contract would not reduce by a single mill the proposed initial price, 21.4¢ per Mcf plus 1¢ gathering tax. Its sole effect would be to confer on the Commission jurisdiction over step escalated price increases; jurisdiction which it now possesses anyway, but which might be lost if the Harris bill should be enacted in its present form.[2]

Such a "concession" fails to meet any of the objections set forth in the Commission's Findings and Order of April 22, 1957. The Commission there stated:

> "The record contains insufficient evidence or testimony, however, on which to base a finding that the public convenience and necessity requires the

[1] Letter dated May 9, 1957 from J. H. Gutride, Secretary of Federal Power Commission to Bernard A. Foster, Jr., attorney for The Atlantic Refining Company and Cities Service Production Company.

[2] It is, of course, superfluous to point out that under existing law applicants are giving up nothing. We believe, moreover, that any conjecture as to the content of the law in 1962 is wholly speculative and unfounded.

sale of these volumes of gas at the particular rate level here proposed. • • •

"Those factors make it abundantly evident that, in the public interest, this crucial sale should not be permanently certificated unless the rate level has been shown to be in the public interest. See Cities Service Gas Co., Signal Oil and Gas Co., 14 F.P.C. , opinion No. 288, Nos. G-2569, G-2570 November 28, 1955, affirmed as *Signal Oil* and Gas Co. v. *F.P.C.*, 238 F. 2d 771 (CA3), certiorari denied, 353 U. S. 923."

It has been perfectly clear throughout these proceedings that whatever objections may have been raised to other provisions of the original contract, the crucial issue is the unprecedented initial price and the absence of adequate evidence [878] in the record to establish its propriety.[3] Under the law such an infirmity is fatal. It demanded, at the very least, a remand. It cannot be cured by a concession (of dubious value) on some other issue.

Naturally, it is always within an applicant's discretion to accept or reject any type of certificate, temporary or permanent. Its threat to reject a certificate unsatisfactory to it cannot influence the Commission's decision on the merits. If it were otherwise, an applicant could frustrate the whole purpose of a Section 7 proceeding by the simple device of threatening to reject any certification which granted less than the contract called for. CATCO's threat herein cannot be used to compensate for the deficiencies in its case.

[3] The inapplicability of Section 4, and the ineffectiveness of Section 5 proceedings to adequately protect the public with respect to initial price has been commented on so often in Commission opinions and in our briefs that we merely reiterate it in passing.

Answer of New York Public Service Commission to Applicants' Motion Dated May 6, 1957, Docket Nos. G-11024, et al., Filed May 16, 1957

The Commission's order of April 22, 1957 was not only a proper exercise of discretion, but correct as a matter of law. We submit that on the record in this case no decision granting the application at the contract price, under either the original or the proposed amended contract, would be proper. Nothing in applicants' motion requires or permits a "modification" of the order as requested. The motion should be denied.

Respectfully submitted,

PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK
By /s/ KENT H. BROWN
Kent H. Brown
Counsel
55 Elk Street, Albany 1, N. Y.

BARBARA M. SUCHOW
Of Counsel

• • •

Answer of The Brooklyn Union Gas Company and Long Island Lighting Company to Applicants' Motion to Amend the Commission's Order, Docket Nos. G-11024, *et al.*, Filed May 16, 1957

* * *

[889] The Brooklyn Union Gas Company and Long Island Lighting Company were each served by mail with a document prepared by the applicants entitled "Application for Rehearing" dated May 6, 1957. Under the Commission's Rules of Practice and Procedure answers to applications for rehearings are not accepted by the Commission. However, by letter dated May 9, 1957, the Secretary of the Commission advised the applicants and other parties to this proceeding, including intervenors, Brooklyn Union and Long Island, that the Commission had construed the applicants' application for a rehearing to be a motion to amend the Commission's order.

For their answer to the said motion of the applicants Brooklyn Union and Long Island respectfully submit the following:

I

By its order of April 22, 1957, the Commission issued temporary certificates authorizing sales by the applicants, *and* also a temporary [890] certificate to *Tennessee* for the construction of the offshore facilities which would connect with the platforms of the applicants.

The Commission in paragraph (F) of its order required unconditional acceptance, within 15 days, of the temporary certificates as conditioned by the said order. As one of the conditions the Commission remanded the proceedings back to the Presiding Examiner to determine "what rates the public convenience and necessity requires these sales to be made if permanent certificates are to be granted" to these applicants upon final disposition of their applications.

Answer of The Brooklyn Union Gas Company and Long Island Lighting Company to Applicants' Motion to Amend the Commission's Order, Docket Nos. G-11024, et al., Filed May 16, 1957

In Section III of their application for rehearing (motion to amend the Commission's order) the producer applicants conclude "that the nature and extent of the economic risk is such as to foreclose their acceptance of the aforesaid temporary certificates."

Again in Section IV of their said application, the applicants conclude that "the parties cannot afford to commence construction until at least the initial rate is resolved."

As the record in this proceeding discloses Tennessee is the company that is to construct the offshore facilities from a connection of its existing system at Kinder, Louisiana to the applicants' well platforms in the Gulf. It is Tennessee, not the applicants, that has been granted a temporary certificate for this construction. Tennessee's case in [891] which evidence will presumably be presented for the Commission's consideration in determining whether a permanent certificate should be granted Tennessee for the construction of these facilities, has not even been heard. If the facilities are to be constructed this spring and early summer before the bad weather season, it is apparent that Tennessee will have to commence this construction under the temporary certificate granted it by the Commission before the Commission could possibly have before it the facts on which it could determine whether a permanent certificate should be issued to Tennessee. Indeed Tennessee, as yet, has issued no statement that it would refuse the temporary certificate granted to it for the construction of these necessary offshore facilities.

It therefore appears that the economic risk of commencing construction of these facilities is on Tennessee, not these applicants, and that this risk is no greater than

any pipeline assumes when a temporary certificate is granted by the Commission prior to a hearing in which the Commission will have before it evidence on which a determination of a permanent certificate can be made.

II

In Section V of their said application (motion) the applicants reargue the point that the initial contract price of 22.4¢ per Mcf for gas sold at the platforms is only 1.4¢ per Mcf higher than the initial price in a number of sales previously certificated by the Commission in [892] Southern Louisiana, and that this difference is more than justified by the fact that the applicants' proposed sales are made possible by costly offshore operations.

These arguments were before the Commission when it originally considered the evidence and arguments made in this proceeding. The Commission's order of April 22, 1957 clearly shows that the Commission carefully considered these very arguments in reaching the decision that it did.

III

In Section VI of their application for rehearing (motion to amend the Commission's order) these applicants state that "the Commission will be vested with ample means of protecting the public interest, under existing law, through its powers under sections 4 and 5 of the Natural Gas Act. Indeed, rate investigations are cur-

rently underway with respect to most of the Applicants here involved."

Apparently from this concession the applicants recognize the Commission's power to review and determine in a Section 5(a) proceeding, the justness and reasonableness of the initial rate of 22.4¢ per Mcf proposed to be charged by Tennessee. Just how their economic risk would be improved if a permanent certificate were to be granted now and the Commission should determine in a Section 5(a) proceeding shortly after the proposed sales actually commenced this fall, that the initial contract rate [893] was unjust and unreasonable and should be reduced, is not disclosed. Apparently by demanding permanent certificates now these applicants wish to take advantage of any regulatory lag that might exist, and to have their initial contract price in effect and not subject to refund from the time when the sales to Tennessee actually commence this fall and the date when the Commission made a determination in a 5(a) proceeding with respect to the initial rate. The possible advantages accruing to the applicants from a possible regulatory lag in the Commission's determination of a just and reasonable initial rate do not appear to be a sufficient reason for the Commission to grant permanent certificates with respect to the proposed sales at this time. The course suggested by the Commission in its order seems more fair to all parties, namely, that these applicants present their proof in justification of the contract price to the Examiner in the remanded proceedings to the end that the Commission can determine whether these prices are in the public

interest and then issue permanent certificates conditioned as to the initial price as the Commission may deem proper, before sales are made by these applicants to Tennessee in November 1957.

IV

In Sections V and VI of their said application (motion) these applicants refer to the Harris-O'Hara Bill, HR 6790-6791 which has recently been introduced in the 85th Congress. The applicants state, [894] "Under such proposed legislation, as applied to the facts of this case, it now appears that the Commission might possibly lose continuing supervision over the future prices provided for in the several contracts, as matters now stand. To prevent this, Applicants are willing to acquiesce in steps to insure that the future prices here provided may be tested under either the applicable rate provisions of the present law, or the reasonable market price standard proposed in the Harris bill, if the latter be enacted."

Here again the applicants' concern appears to be with respect to the Commission's review of the initial price, and not the review of future price increases under the applicants' contracts. While the Commission in this proceeding must proceed under the existing law, it is not presumed to be unaware of the effect of the possible enactment of the Harris-O'Hara Bill. Under such circumstances it is apparent that the Commission's action in granting these applicants only temporary certificates at this time is proper and fair to all parties to the proceedings. By such action the Commission has merely reserved

Answer of The Brooklyn Union Gas Company and Long Island Lighting Company to Applicants' Motion to Amend the Commission's Order, Docket Nos. G-11024, et al., Filed May 16, 1957

the right to determine, in the event the Harris-O'Hara Bill is enacted, whether the initial contract price and the future price increases may exceed the reasonable market price standard contained in the proposed Bill now before the Congress.

V

It would seem that what is desired by all the parties to this proceeding is prompt determination by the Commission, after a presenta- [895] tion of proper evidence, that the initial price of 22.4¢ per Mcf at which the proposed sales will be made is in the public interest. This is true whether the Harris-O'Hara Bill is enacted or not. These applicants in their application for rehearing (motion to amend the Commission's order) refer to their manifest and persistent efforts to make the large reserves of natural gas, here involved, available to the interstate market. Brooklyn Union and Long Island have the same desire, and to this end are prepared to cooperate to the end that the price issues referred to by the Commission may be expeditiously presented to and determined by the Commission in the manner suggested by the Commission's order.

For the foregoing reasons Brooklyn Union and Long Island respectfully submit that the application for rehearing (motion to amend the Commission's order) to provide

Answer of The Brooklyn Union Gas Company and Long Island Lighting Company to Applicants' Motion to Amend the Commission's Order, Docket Nos. G-11024, et al., Filed May 16, 1957

for the issuance of permanent certificates at this time should be denied.

Respectfully submitted,

CULLEN AND DYKMAN
Cullen and Dykman
Attorneys for Long Island Lighting Company
177 Montague Street
Brooklyn 1, New York

DAVID K. KADANE, General Counsel
EDWARD M. BARRETT, General Attorney
Long Islang Lighting Company
250 Old Country Road
Mineola, New York

Dated: May 16, 1957

EDWIN F. RUSSELL
EDWIN F. RUSSELL
ROBERT B. LISLE
Of Counsel

• • •

Application of Tennessee Gas Transmission Company for Rehearing and Reconsideration, Docket Nos. G-11024, *et al.*, Filed June 4, 1957

* * *

[910] Tennessee Gas Transmission Company (Tennessee), Intervenor, pursuant to Section 19(a) of the Natural Gas Act and Section 1.34 of the Commission's Rules, files this Application for Rehearing and Reconsideration of the Commission's "Findings and Order Issuing Permanent Certificates of Public Convenience and Necessity and Modifying Previous Order", issued in this proceeding on May 20, 1957. In support hereof, Tennessee respectfully shows as follows:

I

On May 20, 1957, the Commission issued an order granting permanent certificates of public convenience and necessity to the above-named independent producer-applicants authorizing the sale of natural gas to Tennessee from leases in the East Cameron, West Cameron and Vermilion areas off the coast of Louisiana in the Gulf of Mexico, and the construction and operation of any facilities, subject to the jurisdiction of the Commission, used for such sale, as more fully described in the applications in this proceeding. The certificates were issued subject to the condition that the producer-applicants [911] shall within 20 days file with the Commission a duly executed amendment to Section 10 of their contracts with Tennessee embodying the language set out in paragraph (B) of the order. Such condition requires, *inter alia*, that the initial price of the gas in the contracts be reduced from 21.4 cents per Mcf to 17 cents per Mcf (exclusive of the one-cent Louisiana gathering tax). The Commission indicated in its order that if such condition were complied with, and the producer-applicants thereafter filed a proposed rate

Application of Tennessee Gas Transmission Company for Rehearing and Reconsideration, Docket Nos. G-11024, et al., Filed June 4, 1957

increase, the Commission would limit suspension of such initial rate increase filing to a period of 24 hours.

It is clear that the practical effect of the Commission's order would be to convert the present initial contract price of 21.4 cents per Mcf from a non-suspendible *initial* rate under the Natural Gas Act to a suspendible rate *change*. It is equally clear that the agreed contract price is sought to be changed by the Commission, under pain of forfeiture of a certificate, notwithstanding the holding of the Supreme Court in *United Gas Pipe Line Co. v. Mobile Gas Service Corp.*, 350 U. S. 332, at page 378, that:

> "In construing the Act, we should bear in mind that it evinces no purpose to abrogate private rate contracts as such. To the contrary, by requiring contracts to be filed with the Commission, the Act expressly recognizes that rates to particular customers may be set by individual contracts. In this respect, the Act is in marked contrast to the Interstate Commerce Act, which in effect precludes private rate agreements by its requirement that the rates to all shippers be uniform, a requirement which made unnecessary any provision for filing contracts. • • •"

II

It is not the purpose of this application to reargue the question of the legality of the Commission's order. Tennessee and the applicant-producers are firmly convinced that the Congress never intended that initial [912] rates in a contract involving an initial service should be suspended either directly, or indirectly through the device of

Application of Tennessee Gas Transmission Company for Rehearing and Reconsideration, Docket Nos. G-11024, et al., Filed June 4, 1957

a condition in a certificate. Such arguments having been fully presented in our briefs and pleadings, we shall not repeat them here. Rather, it is our purpose here to inform the Commission of recent developments so that the Commission may, after being fully advised of the consequences of its order of May 20, 1957, reconsider and modify said order so as to avert irreparable injury to Tennessee and the fuel economy of the areas which it serves.

Tennessee has been definitely advised by the producer-applicants that they will not amend Section 10 of the contract so as to change the initial rate from 21.4 cents per Mcf to 17 cents per Mcf. Tennessee has been further informed by the producer-applicants that the certificates issued by said order will not be accepted by them for that reason, and that, accordingly, the contracts will be terminated. It is clear, therefore, that Tennessee now faces the stark reality of contract termination; and its customers face the grim reality of suffering the loss of natural-gas supplies which are required to insure adequate and continuous long-term service and to meet the expanding needs of the consumers. The consequences of the loss of these valuable gas reserves are so far-reaching, and the impact thereof on the economy of the areas involved is so great, as to stagger the imagination. The Commission recognized that the public convenience and necessity requires the attachment by Tennessee of these gas reserves when it stated in its order issued April 22, 1957 in the proceeding:

> "The examiner has found there is a need for those volumes of gas on the system of Tennessee Gas, and that the applicants are ready and able to deliver

them and take them, respectively. These findings we adopt. They argue conclusively that the sale is necessary in the public interest. • • •"

[913] In these circumstances, Tennessee feels that it would be remiss in its duty if it failed to make this final appeal to the Commission in an effort to avert the termination of its contracts, the loss of these valuable gas reserves, and the disastrous consequences which are certain to result therefrom. In so doing, Tennessee does not underestimate or belittle the importance of considerations as to price. But, as we have frequently pointed out, after these gas reserves have been committed to Tennessee's markets, the public will be adequately protected through the normal rate-fixing provisions of Section 5 of the Natural Gas Act, as Congress intended.

The fact of the matter is that the price feature of the contract has been magnified far out of proportion to its real significance. Any doubts concerning this are quickly dispelled by reference to the unrefuted facts of record which establish that:

1. The price provisions in the contract do not affect or trigger any of Tennessee's existing favored nation or renegotiation clauses contained in its other gas purchase contracts or in the contracts of any other company.

2. Unlike the *Signal* case, the area here involved is a *new* area from which no other sales are now being made. Consequently, no increase in an area price is involved here, and no economic disruption will be caused by the contract price.

Application of Tennessee Gas Transmission Company for Rehearing and Reconsideration, Docket Nos. G-11024, et al., Filed June 4, 1957

3. Not a shred of evidence was introduced to prove that the contract rate is unjust or unreasonable.

4. Texas Gas Transmission Company is paying 20 cents per Mcf and Southern Natural Gas Company is paying 20¼ cents per Mcf in areas in which Tennessee now purchases gas. For gas purchased in the southeastern portion of Louisiana, American Louisiana and United Fuel have contracts in which the prices "started out" at 20 cents per Mcf. Olin Gas Transmission Company is also paying 20 cents for gas purchased in that area (Tr. 294-6). Yet, these prices are for smaller reserves and for reserves having less potential than those [914] involved in the instant case (Tr. 295-6). In the *Houston, Texas Gas and Oil* case, the Commission observed (Opinion 301, p. 7) that Florida Power will be paying for Louisiana gas "21.0 cents per Mcf for the first two years after the date of initial delivery and 22.5 cents per Mcf after the first two years. • • •"

In the welter of the discussion concerning rates in this proceeding, sight seems to have been lost of the testimony of Tennessee's witness Witmer to the effect that "• • • *the initial price in this contract, by itself, would not cause Tennessee to file a rate increase*" (Tr. 237). In this regard, it is to be noted that no part of the rate increase involved in Tennessee's pending rate proceedings (Docket Nos. G-5259 and G-11980) reflects any claimed increase in purchased gas expense by reason of the anticipated

purchase of gas under the contract involved in the instant proceeding.

III

As indicated above, Tennessee has been advised that the certificates issued by the Order of May 20, 1957 are not satisfactory to any of the four producer-applicants because of the 17-cent price condition. This is for the reason that this condition places the burden of proof as to the 21.4 cent initial contract price upon the sellers under a Section 4 proceeding, whereas in their opinion this burden should properly be upon the Commission in a Section 5(a) proceeding. They are of the further opinion that it would constitute an undue burden to require them to file a Section 4 application covering one field while at the same time they are presently defending Section 5(a) proceedings which involve their entire interstate sales.

The use of a condition in a certificate to accomplish such a reversal of the procedure contemplated by the Natural Gas Act raises a serious question in the minds of the applicant-producers as to the fairness [915] of the regulation they can anticipate under either the Natural Gas Act as it now stands or under the Harris Bill (H.R. 6790) if enacted.

In its order of May 20, 1957, the Commission found that "the record does not contain sufficient evidence on which to base a finding that the public convenience and necessity requires the sale of the gas at that particular [21.4 cents] rate level." It is clear, however, that the record does not contain a single shred of evidence which supports a rate

level of 17 cents per Mcf. In these circumstances, it seems crystal clear that the initial contract rate as fixed by the parties is the only lawful rate that can be made initially effective pending any investigation under Section 5(a) of the Natural Gas Act.

The Commission further found in its order that:

> "• • •. Furthermore, under the provisions of the so-called Harris Bill, if it is enacted into law, the proposed initial price might no longer be subject to adjustment by us. • • •"

In this regard, the Commission's attention is directed to an important event which transpired since the issuance of that order. On May 22, 1957, the Chairman of the Senate Interstate and Foreign Committee announced that the Senate would not have time to consider the Harris Bill this year. It seems clear, therefore, that the Commission will have ample time within which to resolve the question of the reasonableness of the 21.4-cent contract rate in a Section 5(a) proceeding before the Harris Bill can be enacted into law.

[916] WHEREFORE, Tennessee respectfully and urgently requests that the Commission, upon reconsideration of its Order of May 20, 1957, revise the same to conform to the relief requested by the producer-applicants in their

Application of Tennessee Gas Transmission Company for Rehearing and Reconsideration, Docket Nos. G-11024, et al., Filed June 4, 1957

Motion for Modification[1] of the Commission's Order of April 22, 1957.

Respectfully submitted,

TENNESSEE GAS TRANSMISSION COMPANY
By Harry S. Littman
Its Attorney

William C. Braden, Jr.
Commerce Building
Houston, Texas

Harry S. Littman
Jack Werner
317 Wyatt Building
Washington, D. C.
Attorneys for Tennessee Gas
Transmission Company

(Sworn to June 3, 1957.)

[1] Said Motion was filed herein on May 6, 1957 as an "Application for Rehearing."

• • •

Order Granting Rehearing and Fixing Date for Oral Argument and Specifying Time Allotted for Argument, Docket Nos. G-11024, *et al.*, Issued June 6, 1957

* * *

[920] On April 22, 1957, the Commission issued its findings and order in the above-styled proceedings granting temporary certificates of public convenience and necessity to Continental Oil Company, The Atlantic Refining Company, Cities Service Production Company and Tidewater Oil Company (hereinafter collectively referred to as Catco) and to Tennessee Gas Transmission Company (Tennessee Gas). In such order (Paragraph D, mimeo. p. 5) the Commission, among other things, directed that the proceedings "be remanded to the presiding examiner to determine at what rate the public convenience and necessity requires the sale of natural gas by Catco to Tennessee Gas to be made if these Catco companies are granted permanent certificates of public convenience and necessity."

The contracts between the Catco companies and Tennessee Gas provided for an initial rate of 21.4 cents[1] per Mcf of natural gas and for a definitely fixed price escalation of 2 cents per Mcf every four years.

On May 6, 1957, the Catco companies filed a motion for modification of the Commission's order issued April 22, 1957, which in effect, requested the Commission to approve the initial rate of 21.4 cents per Mcf and to issue a final certificate of public convenience and necessity to each of the Catco companies. In such motion, however, the Catco companies proposed to amend their respective contracts with Tennessee Gas so as to change the four year definite fixed price escalations to indefinite price escalations.

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[1] Reimbursement for the one-cent Louisiana gathering tax would be added to this amount.

Order Granting Rehearing and Fixing Date for Oral Argument and Specifying Time Allotted for Argument, Docket Nos. G-11024, et al., Issued June 6, 1957

[921] Answers to the aforementioned motion were filed by New York Public Service Commission, Lake Shore Pipe Line Company, Brooklyn Union Gas Company and Long Island Lighting Company (jointly), Public Service Electric and Gas Company and Tennessee Gas. The answers filed by the parties, other than that of Tennessee Gas, opposed the granting of the motion.

Subsequently, on May 20, 1957, the Commission issued its findings and order granting certificates of public convenience and necessity to the Catco companies on condition that the contracts between the Catco companies and Tennessee Gas be amended so as to provide for an initial price of 17 cents per Mcf, with provision for filing a request for an increase in such price to 21.4 cents per Mcf. Under the condition provision was also made for the incorporation in such contract of four year indefinite price escalations.

On June 4, 1957, Tennessee Gas filed an application for rehearing and reconsideration of the Commission's order issued on May 20, 1957. In such application, Tennessee Gas represents that the Catco companies are unwilling to accept the certificates of public convenience and necessity granted by the order issued May 20, 1957, under the conditions specified in such order. Tennessee Gas represents further in such application for rehearing that the Catco companies propose to terminate the gas sales contracts.

Tennessee Gas requests the Commission, upon reconsideration of its order issued May 20, 1957, to revise such order to conform to the relief requested by the Catco companies in their Motion for Modification of the Commission's order issued April 22, 1957.

Order Granting Rehearing and Fixing Date for Oral Argument and Specifying Time Allotted for Argument, Docket Nos. G-11024, et al., Issued June 6, 1957

Because of the great public interest involved in these proceedings the Commission *finds*:

(1) It is necessary and desirable in the public interest to grant the application for rehearing and reconsideration filed in these proceedings by Tennessee Gas on June 4, 1957.

(2) It is necessary and desirable to properly carry out the provisions of the Natural Gas Act to hear oral argument in these proceedings upon the contentions made and the issues presented by the application for rehearing, the motion for modification and the answers thereto heretofore filed in these proceedings.

The Commission orders:

(A) Oral argument be held before the Commission on June 12, 1957, at 10:00 a.m. (EDST) in a Hearing Room of the Federal Power Commission, 441 G Street, N. W., Washington, D.C.

[922] (B) Time for oral argument is allotted as follows:

Tennessee Gas Transmission Company	30 minutes
Continental Oil Company	20 minutes
The Atlantic Refining Company	20 minutes
Cities Service Production Company	20 minutes
Tidewater Oil Company	20 minutes
New York Public Service Commission	20 minutes
Lake Shore Pipe Line Co.	20 minutes
Brooklyn Union Gas Company and Long Island Lighting Company	20 minutes
Public Service Electric and Gas Company	20 minutes

Order Granting Rehearing and Fixing Date for Oral Argument and Specifying Time Allotted for Argument, Docket Nos. G-11024, et al., Issued June 6, 1957

Provided, however, that the Catco companies and interveners in these proceedings may agree upon such division of time among them not in excess of the total time (80 minutes) allotted to them.

By the Commission.

J. H. GUTRIDE
Joseph H. Gutride,
Secretary.

• • •

Amendment of Gas Purchase and Sales Agreement between Tennessee Gas Transmission Company and Continental Oil Company

* * *

[944] WHEREAS, by an instrument dated August 17, 1956, Tennessee Gas Transmission Company, a Delaware corporation, as Buyer, and Continental Oil Company, a Delaware corporation, as Seller, entered into a Gas Purchase and Sales Agreement covering gas to be produced from certain leases therein described in the East Cameron, West Cameron and Vermilion areas of the Continental Shelf of the Gulf of Mexico, to which instrument reference is here made for all purposes; and

WHEREAS, both parties desire to amend said Gas Purchase and Sales Agreement as herein provided to comply with the order of the Federal Power Commission issued June 24, 1957, in its Docket No. G-11024 et al;

NOW, THEREFORE, in consideration of the premises and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, it is agreed that the above-described Gas Purchase and Sales Agreement shall be amended as follows:

If and in the event that H. R. 6790 or any substantially similar legislation is enacted into law by the 85th Congress, and becomes effective, then the provisions of Section 10, *Prices,* commencing with the portion thereof reading

[945] "From the date of initial delivery or November 1, 1957, whichever occurs first, until November 1, 1962 ..... 21.4 Cents per MCF"

to and including that portion thereof reading

"From November 1, 1986 to expiration of this contract ..... 35.4 Cents per MCF"

Amendment of Gas Purchase and Sales Agreement between Tennessee Gas Transmission Company and Continental Oil Company

is hereby deleted, and the following is substituted in lieu thereof:

From the date of initial delivery or November 1, 1957, whichever occurs first, and thereafter .....: 21.4 Cents per MCF

Provided that, after November 1, 1962, Seller shall be entitled to receive and Buyer shall pay the reasonable market price, if higher than 21.4 cents per Mcf, for the gas at the points of delivery within the limitations and subject to the terms and conditions as hereinafter set forth. Such reasonable market price shall be that as fixed by the Federal Power Commission under applicable law, after initial determination thereof by Seller as herein provided. If Seller should determine that the reasonable market price for the gas at the points of delivery for any of the 4-year periods hereinafter listed would be in excess of the price then being paid hereunder, Seller may notify Buyer, not less than eight months prior to the commencement of such period, of the price to be paid by Buyer hereunder during such period and until a subsequent determination by Seller in accordance herewith is made effective. Any price so determined and fixed shall be not less than 21.4¢ per Mcf and not more than:

23.4 Cents per MCF ..... From November 1, 1962 to November 1, 1966

Amendment of Gas Purchase and Sales Agreement between Tennessee Gas Transmission Company and Continental Oil Company

25.4 Cents per MCF ..... From November 1, 1966 to November 1, 1970

27.4 Cents per MCF ..... From November 1, 1970 to November 1, 1974

29.4 Cents per MCF ..... From November 1, 1974 to November 1, 1978;

[946] and, in the event the term of this contract is extended hereunder beyond November 1, 1978, then not more than

31.4 Cents per MCF ..... From November 1, 1978 to November 1, 1982

33.4 Cents per MCF ..... From November 1, 1982 to November 1, 1986

35.4 Cents per MCF ..... From November 1, 1986 to the expiration of this contract.

Except as altered hereinabove, the provisions of Section 10, *Prices*, shall remain unaffected and in full force and effect.

In the event that the above-described Federal Power Commission order of June 24, 1957 does not become final, this Amendment shall be null and void. Except as herein expressly modified, the above-described Gas Purchase and Sales Agreement shall remain in full force and effect in accordance with all of its terms and provisions.

Amendment of Gas Purchase and Sales Agreement between Tennessee Gas Transmission Company and Continental Oil Company

EXECUTED IN DUPLICATE ORIGINALS on the 8th day of July, 1957.

TENNESSEE GAS TRANSMISSION COMPANY

By: /s/ HAROLD BURROW
Senior Vice President
BUYER

ATTEST:

/s/ LAVERNE E. COLLINS
Assistant Secretary
(SEAL)

CONTINENTAL OIL COMPANY

By: /s/ O. L. FISHER
Vice President
SELLER

ATTEST:

/s/ KEITH W. BLINN
Assistant Secretary
(SEAL)

(Acknowledged July 8, 1957.)

• • •

Supplement to The Atlantic Refining Company's Application for a Certificate of Public Convenience and Necessity; Atlantic Refining Company's Acceptance of Certificate of Public Convenience and Necessity and Resolution of Board of Directors

* * *

[948] Comes now The Atlantic Refining Company (Atlantic) and supplements its application filed in the above-entitled proceedings on September 7, 1956, as follows:

There is appended hereto, as Exhibit "C" to the foregoing application, a copy of an "Amendment to Gas Purchase and Sales Agreement, East Cameron, West Cameron, and Vermilion Areas," executed by Atlantic, as seller, and Tennessee Gas Transmission Company, as buyer.

Said agreement is hereby filed with the Commission, in accordance with Paragraph (B) of the Commission's "Order, Upon Application for Rehearing, Adopting Initial Decision of Presiding Examiner with Modifications and

Conditions," issued in the above-entitled proceedings on June 24, 1957.

Respectfully submitted,

THE ATLANTIC REFINING COMPANY

By /s/ BERNARD A. FOSTER, JR.
Bernard A. Foster, Jr.

Dated at Washington, D. C., this 10th day of July, 1957.

(Sworn to July 10, 1957.)

• • •

AMENDMENT TO GAS PURCHASE AND SALES AGREEMENT EAST CAMERON, WEST CAMERON AND VERMILION AREAS

[952] WHEREAS, on August 10, 1956, a certain Gas Purchase and Sales Agreement was entered into by and between Tennessee Gas Transmission Company, a Delaware corporation, and The Atlantic Refining Company, a Pennsylvania corporation, covering the sale of natural gas from the East Cameron, West Cameron and Vermilion Areas off the coast of Louisiana in the Gulf of Mexico, to which instrument reference is hereby made for all purposes; and

WHEREAS, both parties desire to amend said Gas Purchase and Sales Agreement as herein provided to comply with Paragraph (B) of the order of the Federal Power Commission issued June 24, 1957, in its Docket No. 11034;

NOW, THEREFORE, in consideration of the premises, it is hereby agreed that the above described Gas Purchase

and Sales Agreement shall be and the same hereby is amended as follows:

"If and in the event that H. R. 6790 or any substantially similar legislation is enacted into law by the 85th Congress, and becomes effective, then the provisions of Section 10, *Prices*, commencing with the portion thereof reading

'From the date of initial delivery or November 1, 1957, whichever occurs first, until November 1, 1962 ..... 21.4 Cents per MCF

[953] to and including that portion thereof reading

'From November 1, 1986 to expiration of this contract ..... 35.4 Cents per MCF'

is hereby deleted, and the following is substituted in lieu thereof:

From the date of initial delivery or November 1, 1957, whichever occurs first, and thereafter ..... 21.4 Cents per MCF

Provided that, After November 1, 1962, Seller shall be entitled to receive and Buyer shall pay the reasonable market price, if higher than 21.4 cents per Mcf, for the gas at the points of delivery within the limitations and subject to the terms and conditions as hereinafter set forth. Such reasonable market price shall be that as fixed by the Federal Power Commission under applicable law, after initial determination thereof by Seller as herein provided. If Seller should determine that

the reasonable market price for the gas at the points of delivery for any of the 4-year periods hereinafter listed would be in excess of the price then being paid hereunder, Seller may notify Buyer, not less than eight months prior to the commencement of such period, of the price to be paid by Buyer hereunder during such period and until a subsequent determination by Seller in accordance herewith is made effective. Any price so determined and fixed shall be not less than 21.4¢ per Mcf and not more than:

23.4 Cents per MCF	From November 1, 1962 to November 1, 1966
25.4 Cents per MCF	From November 1, 1966 to November 1, 1970
27.4 Cents per MCF	From November 1, 1970 to November 1, 1974
29.4 Cents per MCF	From November 1, 1974 to November 1, 1978;

[954] and, in the event the term of this contract is extended hereunder beyond November 1, 1978, then not more than

31.4 Cents per MCF	From November 1, 1978 to November 1, 1982
33.4 Cents per MCF	From November 1, 1982 to November 1, 1986
35.4 Cents per MCF	From November 1, 1986 to the expiration of this contract.

Supplement to The Atlantic Refining Company's Application for a Certificate of Public Convenience and Necessity; Atlantic Refining Company's Acceptance of Certificate of Public Convenience and Necessity and Resolution of Board of Directors

Except as altered hereinabove, the provisions of Section 10, *Prices,* shall remain unaffected and in full force and effect."

In the event that the above described Federal Power Commission order of June 24, 1957, does not become final and effective, or should be set aside or held invalid, either in whole or in part, this Amendment shall be voidable at the election of either party hereto within a reasonable time thereafter. Except as herein expressly modified, the above described Gas Purchase and Sales Agreement shall remain in full force and effect in accordance with all of its terms and provisions.

EXECUTED IN DUPLICATE ORIGINALS on this the 8th day of July, 1957.

TENNESSEE GAS TRANSMISSION COMPANY
By /s/ HAROLD BURROW
Senior Vice President

ATTEST:
/s/ LAVERNE E. COLLINS
Assistant Secretary

THE ATLANTIC REFINING COMPANY
By /s/ J. N. MENDENHALL
General Manager of Domestic Crude Oil Production

ATTEST:
/s/ R. O. POTCHERNICK
Assistant Secretary

(Acknowledged by Atlantic July 9, 1957.)
(Acknowledged by Tennessee July 8, 1957.)

• • •

Acceptance of Certificate of Public Convenience and Necessity

[956] Pursuant to ordering Paragraph (C) of the Commission's "Order Upon Application for Rehearing, Adopting Initial Decision of Presiding Examiner with Modifications and Conditions" issued June 24, 1957, The Atlantic Refining Company hereby accepts the Certificate of Public Convenience and Necessity issued to it by such order authorizing the sale of natural gas to Tennessee Gas Transmission Company from Atlantic's interest in production from leases in the East Cameron, West Cameron and Vermilion Areas off the coast of Louisiana in the Gulf of Mexico; without, however, admitting or conceding any asserted jurisdiction of the Federal Power Commission except to the extent required by law.

Respectfully submitted,

THE ATLANTIC REFINING COMPANY

By R. A. Sunkel

(Sworn to July 5, 1957.)

* * * *

[958] I, M. M. MILLER, an Assistant-Secretary of THE ATLANTIC REFINING COMPANY, certify that at a regular meeting of the Board of Directors of THE ATLANTIC REFINING COMPANY, a Pennsylvania corporation, held at 260 South Broad Street, Philadelphia, Pennsylvania, on May 1, 1956, at which a quorum was present and voting throughout, the following resolution was duly adopted:

> RESOLVED, That the President or any Vice President or the Treasurer of the Company be and each of them hereby is severally authorized and empowered

in the name and on behalf of the Company to make, execute, authenticate, acknowledge and deliver any contract, agreement, release, assignment, lease, conveyance, deed, transfer of real or personal property, or any other instrument, which he may deem necessary or proper in connection with the business of the Company, without further act or resolution of this Board, and the Secretary or any Assistant Secretary be and each of them hereby is severally authorized and empowered to affix the corporate seal to any such papers or documents and to attest the same in cases where such action is necessary or appropriate.

I further certify that the above-mentioned resolution is presently in force and effect and has been in force and effect since the aforesaid date of its adoption. I do further certify that L. A. SUNKEL is a duly elected, qualified and acting Vice President of THE ATLANTIC REFINING COMPANY and has been such at all times subsequent to May 1, 1956.

WITNESS my hand and the official seal of said THE ATLANTIC REFINING COMPANY this 5th day of July, 1957.

M. M. MILLER
Assistant Secretary

(Sworn to July 5, 1957.)

Amendment of Gas Purchase and Sales Agreement between Tennessee Gas Transmission Company and Tidewater Oil Company

* * *

[961] WHEREAS, by an instrument dated August 14, 1956, Tennessee Gas Transmission Company, a Delaware corporation, as Buyer, and Tidewater Oil Company, a Delaware corporation, as Seller, entered into a Gas Purchase and Sales Agreement covering gas to be produced from certain leases therein described in the East Cameron, West Cameron and Vermilion Areas of the Continental Shelf of the Gulf of Mexico, to which instrument reference is here made for all purposes; and

WHEREAS, both parties desire to amend said Gas Purchase and Sales Agreement as herein provided to comply with Paragraph (B) of the order of the Federal Power Commission issued June 24, 1957, in its Docket No. G-11024 et al;

NOW, THEREFORE, in consideration of the premises and for other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, it is agreed that the above described Gas Purchase and Sales Agreement shall be amended as follows:

[962] "If and in the event that H. R. 6790 or any substantially similar legislation is enacted into law by the 85th Congress, and becomes effective, then the provisions of Section 10, *Prices*, commencing with the portion thereof reading

'From the date of initial delivery or November 1, 1957, whichever occurs first, until November 1, 1962 ..... 21.4 Cents per Mcf'

to and including that portion thereof reading

'From November 1, 1986 to expiration of this contract ..... 35.4 Cents per Mcf'

Amendment of Gas Purchase and Sales Agreement between Tennessee Gas Transmission Company and Tidewater Oil Company

is hereby deleted, and the following is substituted in lieu thereof:

From the date of initial delivery or November 1, 1957, whichever occurs first, and thereafter ..... 21.4 Cents per Mcf

Provided that, after November 1, 1962, Seller shall be entitled to receive and Buyer shall pay the reasonable market price, if higher than 21.4 cents per Mcf, for the gas at the points of delivery within the limitations and subject to the terms and conditions as hereinafter set forth. Such reasonable market price shall be that as fixed by the Federal Power Commission under applicable law, after initial determination thereof by Seller as herein provided. If Seller should determine that the reasonable market price for the gas at the points of delivery for any of the 4-year periods hereinafter listed would be in excess of the price then being paid hereunder, Seller may notify Buyer, not less than eight months prior to the commencement of such period, of the price to be paid by Buyer hereunder during [963] such period and until a subsequent determination by Seller in accordance herewith is made effective. Any price so determined and fixed shall be not less than 21.4¢ per Mcf and not more than:

23.4 Cents per MCF ..... From November 1, 1962 to November 1, 1966

25.4 Cents per MCF ..... From November 1, 1966 to November 1, 1970

Amendment of Gas Purchase and Sales Agreement between Tennessee Gas Transmission Company and Tidewater Oil Company

27.4 Cents per MCF ..... From November 1, 1970 to November 1, 1974

29.4 Cents per MCF ..... From November 1, 1974 to November 1, 1978;

and, in the event the term of this contract is extended hereunder beyond November 1, 1978, then not more than

31.4 Cents per MCF ..... From November 1, 1978 to November 1, 1982

33.4 Cents per MCF ..... From November 1, 1982 to November 1, 1986

35.4 Cents per MCF ..... From November 1, 1986 to the expiration of this contract.

Except as altered hereinabove, the provisions of Section 10, *Prices,* shall remain unaffected and in full force and effect."

In the event that the above described Federal Power Commission order of June 24, 1957, does not become final, this Amendment shall be null and void. Except as herein [964] expressly modified, the above described Gas Purchase and Sales Agreement shall remain in full force and effect in accordance with all of its terms and provisions.

Amendment of Gas Purchase and Sales Agreement between Tennessee Gas Transmission Company and Tidewater Oil Company

EXECUTED IN DUPLICATE ORIGINALS on this the 8th day of July, 1957.

TENNESSEE GAS TRANSMISSION COMPANY
By s/ HAROLD BURROW
Senior Vice President

ATTEST:

s/ LAVERNE E. COLLINS
Assistant Secretary

SEAL

TIDEWATER OIL COMPANY
By s/ E. B. MILLER, JR.
Vice President

ATTEST:

s/ CLYDE E. WILLBERN
Assistant Secretary

SEAL

(Acknowledged by Tennessee July 8, 1957.)

(Acknowledged by Tidewater July 11, 1957.)

• • •

Letter, dated July 18, 1957, from Continental Oil Company to Secretary Transmitting the Former's Acceptance of Certificate of Public Convenience and Necessity and Resolution of Board of Directors, Received, July 22, 1957

CONTINENTAL OIL COMPANY

July 18, 1957

[966] Mr. Joseph H. Gutride, Secretary
Federal Power Commission
Washington 25, D. C.

Re: Docket No. G-11024
In the Matter of
Continental Oil Company

Dear Sir:

In accordance with Section (C) of your Order issued under date of June 24, 1957 in the captioned docket, you will find attached the acceptance, under oath, by Continental Oil Company of the certificate issued to it in such Order, accompanied by a resolution of the Board of Directors of Continental Oil Company, duly authenticated, indicating approval of such acceptance.

Very truly yours,

CONTINENTAL OIL COMPANY

By:

Fred B. Willson
Coordinator of Natural Gas Sales

and

By:

Roland B. Voight
Attorney

RBV—JG

• • •

Letter, Dated July 16, 1957, from Tidewater Oil Company to Secretary Accepting Certificate of Public Convenience and Necessity and Transmitting Resolution of Board of Directors

[Letterhead of TIDEWATER OIL COMPANY]

July 16, 1957

[971] Mr. Joseph H. Gutride, Secretary
Federal Power Commission
Washington, D. C.

Dear Mr. Gutride:

By order issued June 24, 1957, in Docket No. G-11049, the Commission granted a certificate of public convenience and necessity to Tidewater Oil Company, authorizing it to sell and deliver gas from the Cameron, West Cameron and Vermilion off-shore areas under and in accordance with the contract between Tidewater and Tennessee Gas Transmission Company dated August 14, 1956.

Paragraph (C) of said order required the acceptance in writing under oath by each of the selling companies of the certificates issued to them by said order. In compliance with Paragraph (C), Tidewater hereby accepts such certificate and in further compliance therewith there is attached hereto a duly authenticated resolution of the Board of Directors of Tidewater, authorizing the acceptance of such certificate and directing that the same be done.

Very truly yours,

TIDEWATER OIL COMPANY

By s/ LLOYD ARMSTRONG
Lloyd Armstrong
Assistant General Manager
Southern Division

Letter, Dated July 16, 1957, from Tidewater Oil Company to Secretary Accepting Certificate of Public Convenience and Necessity and Transmitting Resolution of Board of Directors

SUBSCRIBED AND SWORN TO before me, this the 16th day of July, 1957.

s/ EMMA M. BUTLER
Notary Public in and for
Harris County, Texas

Seal

[973] I, EDWARD H. HERMSEN, Assistant Secretary of Tidewater Oil Company, do hereby certify that the following is a true and correct excerpt from the minutes of the meeting of the Board of Directors of the Company held on the 11th day of July, 1957:

WHEREAS, the Federal Power Commission on June 24, 1957 issued its order in the Matters of Continental Oil Company, et al, Dockets Nos. G-11024, et al, wherein, among other things, it granted a Certificate of Public Convenience and Necessity to the Company in Docket No. G-11049, authorizing it to sell and deliver gas to Tennessee Gas Transmission Company from the East Cameron, West Cameron and Vermilion offshore areas under the terms and conditions of the contract between the Company and Tennessee Gas Transmission Company, dated August 14, 1956, upon certain conditions as set forth in said order, requiring amendment of the contract and the filing of such amendment within twenty (20) days after the issuance of the order, and the acceptance in writing by each of the selling companies, including Tidewater, of said certificates under oath and such acceptance to be accompanied by a resolution of the Board of Directors of the accepting com-

Letter, Dated July 16, 1957, from Tidewater Oil Company to Secretary Accepting Certificate of Public Convenience and Necessity and Transmitting Resolution of Board of Directors

pany, duly authenticated, indicating the approval of the acceptance of the certificate so granted; now therefore be it

RESOLVED, that the officer of the Company be and they are hereby authorized to amend the contract between the Company and Tennessee Gas Transmission Company, dated August 14, 1956, as is required by paragraph (B) of the aforesaid order of the Federal Power Commission issued on June 24, 1957, and the said officers are hereby authorized and directed to accept in writing and under oath the certificate issued to the Company in said order, and such actions are hereby in all things authorized and approved. Such officers are further authorized to take such other actions as may be necessary in the premises fully to comply with the said contract, as amended, and the said order of June 24, 1957.

EDWARD H. HERMSEN
Assistant Secretary

SUBSCRIBED AND SWORN TO BEFORE ME, this the 11th day of July, 1957.

M. WILSON
Notary Public in and for the City & County of San Francisco, State of California,
My Commission Expires January 17, 1960

• • •

Application of Long Island Lighting Co. for Rehearing, Docket Nos. G-11024, *et al.*, Filed July 23, 1957

* * *

[975] The Long Island Lighting Company (Long Island), pursuant to the provisions of Section 19(a) of the Natural Gas Act and the Commission's Rules of Practice and Procedure, hereby makes application for rehearing of the Commission's Findings and Order issued June 24, 1957, in the above entitled proceedings.

In support of its said Application Long Island shows the following:

I

The Long Island Lighting Company supplies gas service to approximately 300,000 customers within a territory consisting of the former Fifth Ward of the Borough of Queens, New York City, and the Counties of Nassau and Suffolk on Long Island in New York State.

II

[976] Long Island is a customer of Tennessee Gas Transmission Company and obtains a portion of its natural gas supply from Tennessee as authorized by this Commission.

III

Long Island as a customer of Tennessee is vitally interested in the effect on Tennessee's rates of the gas purchases Tennessee proposes to make from the applicant's in this proceeding at the prices and contract conditibns set forth in Tennessee's contracts with these applicants. As Long Island obtains the balance of its natural gas not obtained from Tennessee from another pipeline supplier which purchases gas to supply its customers in the same Gulf Coast area of Louisiana as Tennessee, Long Island

is also concerned with the effect that the high prices Tennessee proposes to pay these applicants will have on the price of additional pipeline purchases of gas in the Gulf Coast area.

IV

By order issued by this Commission on February 27, 1957, Long Island was allowed to intervene in this proceeding and did actively participate in the entire proceeding by being represented at the hearings, by filing an initial and reply brief, by filing exceptions to the Examiner's decision and an answer to applicants' motions to modify the Commission's original order issued April 22, 1957, and by being represented by [977] counsel at the oral argument before the Commission on June 12, 1957.

V

The Commission in modifying its order issued May 20, 1957, by the issuance of its order of June 24, 1957, is in error.

The basic issue in a certificate proceeding is whether the proposed service is in the public interest. The courts have held repeatedly that the primary purpose of the Natural Gas Act is the protection of consumers. This basic purpose of the Act cannot be fulfilled in producer certificate cases unless the Commission, in determining whether the proposed service is in the public interest, considers not only the need for the additional gas to be supplied, but also the effect of the proposed service on the pipeline's rates.

This Commission in a producer certificate proceeding cannot lawfully grant permanent certificates to the pro-

ducer applicants unless the rate level at which the proposed service is to be rendered has been shown by competent evidence to be in the public interest.

In this proceeding this Commission itself has twice found that the record contains insufficient evidence or testimony on which the Commission can base a finding that public convenience and necessity requires the sale of the volumes of gas by the producer applicants herein at the particular rate level here proposed.

In its order of April 22, 1957, the Commission said in part:

> [978] "The record contains insufficient evidence or testimony, however, on which to base a finding that the public convenience and necessity requires the sale of these volumes of gas at the particular rate level here proposed. The importance of this issue in certifying this sale cannot easily be overemphasized. This is the first sale from the newly developed offshore fields from which large proportions of future gas supplies will be taken. This is the highest price level at which the sale of gas to Tennessee Gas has been proposed.
>
> These factors make it abundantly evident that, in the public interest, this crucial sale should not be permanently certificated unless the rate level has been shown to be in the public interest. See *Cities Service Gas Co., Signal Oil and Gas Co.*, 14 F.P.C. , opinion No. 288, Nos. G-2569, G-2570, November 28, 1955, affirmed as *Signal Oil and Gas Co.* v. *F.P.C.*, 238 F. 2d 771 (CA 3), certiorari denied, 353 U.S. 923. • • •"

Application of Long Island Lighting Co. for Rehearing
Docket Nos. G-11024, et al., Filed July 23, 1957

Again in its May 20, 1957 order in referring to the proposed initial price of 21.4 cents per M.C.F. plus one cent Louisiana gathering tax, this Commission said:

> "As we have already stated, the record does not contain sufficient evidence on which to base a finding that the public convenience and necessity requires the sale of gas at that particular rate level."

Absent sufficient evidence on which the Commission can base a finding that the public convenience and necessity requires the sale of the gas by these applicants at the proposed rates, this Commission cannot lawfully determine that the proposed service is in the public interest and grant permanent certificates of public convenience and necessity to the producer applicants as it has done by its June 24, 1957 order.

VI

[979] The Commission is in error in finding and concluding in its order of June 24, 1957 as follows:

> "In the present status of the case we are left with the difficult problem of how to assure the delivery of this gas to the large market served by Tennessee Gas, and at the same time protect the consumers from an unreasonably high price. In reaching a solution to this problem we are moved by the primary consideration that the public served through the Tennessee Gas system is greatly in need of increased supplies of natural gas. Further, it appears to us, important as is the issue of price, that as far as the public is concerned, the precise charge that is made initially is less important than

Application of Long Island Lighting Co. for Rehearing, Docket Nos. G-11024, et al., Filed July 23, 1957

the assurance of this great supply of gas. In view of the circumstances and the fact that the record does not show that the 21.4 cent rate is necessarily excessive, we agree with the presiding examiner that this certificate proceeding under Section 7 of the Natural Gas Act should not assume the character of a rate proceeding under Section 5(a). We are of the opinion that, in the circumstances of this case, in view of the great demand for gas by customers of Tennessee Gas, the price considerations should not be made the prime determinant of what the public convenience and necessity require. • • •"

The Commission as a matter of law cannot grant these producer applicants permanent certificates upon a determination based entirely on a claimed need for additional natural gas by Tennessee's customers. A proper and lawful certificate can only be granted under the Natural Gas Act on a determination based on adequate evidence that the applicants are able and willing to furnish the proposed service, the proposed sales of natural gas to Tennessee are required, *and* that the rates under which the proposed service will be rendered are in the public interest. The Commission cannot, as it has done by its order of June 24, [980] 1957, ignore or postpone its determination of the issue of the proposed price and grant these applicants permanent certificates solely upon a showing that the applicants are able and willing to provide the proposed service and a need for the gas by Tennessee's customers, particularly where, as in this instance, the Commission itself has twice found that the record does not contain sufficient evidence upon which the Commission

Application of Long Island Lighting Co. for Rehearing
Docket Nos. G-11024, et al., Filed July 23, 1957

Again in its May 20, 1957 order in referring to the proposed initial price of 21.4 cents per M.C.F. plus one cent Louisiana gathering tax, this Commission said:

> "As we have already stated, the record does not contain sufficient evidence on which to base a finding that the public convenience and necessity requires the sale of gas at that particular rate level."

Absent sufficient evidence on which the Commission can base a finding that the public convenience and necessity requires the sale of the gas by these applicants at the proposed rates, this Commission cannot lawfully determine that the proposed service is in the public interest and grant permanent certificates of public convenience and necessity to the producer applicants as it has done by its June 24, 1957 order.

VI

[979] The Commission is in error in finding and concluding in its order of June 24, 1957 as follows:

> "In the present status of the case we are left with the difficult problem of how to assure the delivery of this gas to the large market served by Tennessee Gas, and at the same time protect the consumers from an unreasonably high price. In reaching a solution to this problem we are moved by the primary consideration that the public served through the Tennessee Gas system is greatly in need of increased supplies of natural gas. Further, it appears to us, important as is the issue of price that as far as the public is concerned, the precise charge that is made initially is less important than

> the assurance of this great supply of gas. In view of the circumstances and the fact that the record does not show that the 21.4 cent rate is necessarily excessive, we agree with the presiding examiner that this certificate proceeding under Section 7 of the Natural Gas Act should not assume the character of a rate proceeding under Section 5(a). We are of the opinion that, in the circumstances of this case, in view of the great demand for gas by customers of Tennessee Gas, the price considerations should not be made the prime determinant of what the public convenience and necessity require. . . ."

The Commission as a matter of law cannot grant these producer applicants permanent certificates upon a determination based entirely on a claimed need for additional natural gas by Tennessee's customers. A proper and lawful certificate can only be granted under the Natural Gas Act on a determination based on adequate evidence that the applicants are able and willing to furnish the proposed service, the proposed sales of natural gas to Tennessee are required, *and* that the rates under which the proposed service will be rendered are in the public interest. The Commission cannot, as it has done by its order of June 24, [980] 1957, ignore or postpone its determination of the issue of the proposed price and grant these applicants permanent certificates solely upon a showing that the applicants are able and willing to provide the proposed service and a need for the gas by Tennessee's customers, particularly where, as in this instance, the Commission itself has twice found that the record does not contain sufficient evidence upon which the Commission

can determine that the rate level at which the proposed service is to be rendered is in the public interest and required by the public convenience and necessity.

VII

The Commission is in error in abandoning the position it has taken in its previous orders of April 22, 1957 and May 20, 1957, in the face of the threats of these producer applicants to cancel their contracts with Tennessee and withdraw this gas from the interstate market unless the Commission certificates the service only on the terms demanded by these applicants themselves.

The inevitable result of the Commissioner's decision is obvious and far reaching. Producer applicants will, under threats to cancel their contracts with pipelines, as these producer applicants have done, demand and set higher and higher initial prices for their gas. On records barren of any evidence upon which a proper determination can be made that the initial price is reasonable and in the public interest, producers will demand the issuance of permanent certificates on their own terms. [981] Always it will be claimed that the need for the additional gas outweighs any consideration of the initial price.

The position taken by the Commission in this proceeding by its June 24th order with respect to its refusal to consider in the certificate proceeding the initial price to be paid these applicants is not only unsound but unlawful in that it does not provide Tennessee's customers and their consumers with the protection against unreasonable initial prices that is required by the Natural Gas Act.

Application of Long Island Lighting Co. for Rehearing, Docket Nos. G-11024, et al., Filed July 23, 1957

VIII

The Commission is in error in assuming as it does by its June 24, 1957 order, that by postponing any decision as to whether the applicants' initial rates are reasonable and in the public interest to the subsequent 5(a) proceedings that it has ordered, Tennessee's customers and their consumers are protected in the manner required by the Natural Gas Act.

Presumably applicants' rate schedules for the proposed service will not be filed until shortly before their deliveries to Tennessee actually commence in November. At that time the 5(a) investigations which the Commission has ordered will begin. After these investigations are completed, hearings will be held and the Commission's customary procedural process followed resulting finally in a Commission order with respect to the applicants' initial rates. All of this would take time.

[982] As the Commission's order in a 5(a) proceeding with respect to rates speaks only prospectively and not retroactively, the untested initial rates would be in effect from the time when deliveries of gas commenced until the date of the Commission's order. Should the Commission eventually determine that the applicants' initial rates were in fact unjust and unreasonable and order them reduced, the applicants would not be required to make any refunds on deliveries made at the initial contract prices up to the date of the Commission's order. In practical effect this imposes all of the burden of any regulatory lag on the customers of Tennessee and permits the applicants to be paid a rate for their gas delivered to Tennessee which rate the Commission may subsequently determine is unjust and unreasonable.

Furthermore, as Commissioner Connole states in his dissent, the controlling reason why these applicants have demanded the 5(a) procedure ordered by the Commission is their desire to have the burden placed on the Commission or complainants to establish that the applicants' initial rates are more than reasonable, instead of themselves having the burden of establishing that the proposed initial rates are reasonable and in the public interest as the procedure specified in the Commission's order of May 20, 1957, would require.

The Commission itself in the Cities Service-Signal Oil and Gas Co. proceeding by its opinion No. 288 has recognized these weaknesses [983] of the postponing consideration of the initial price issue in producer certificate proceedings to subsequent 5(a) proceedings. In that opinion the Commission held that the applicant-seller had the burden in a certificate case of proving all elements of its application so that the Commission could conclude that the proposed service was in the public interest and required by the present and future public convenience and necessity. At page 19 of its Opinion No. 288 the Commission clearly stated that a vital element of such proof in a certificate case is concerned with the rates proposed.

By its order of June 24, 1957 the Commission has repudiated its doctrine of the *Signal Oil* case which has been sustained by the courts and denied Tennessee's customers and their consumers the full and adequate protection against unjust and unreasonable initial rates that the Natural Gas Act provides.

In its order of May 20, 1957 the Commission refers to another reason why a 5(a) review of the initial prices

may not afford Tennessee's customers and their consumers full protection against an unjust and unreasonable initial price. The Commission in its May 20th order stated:

> "Furthermore, under the provisions of the so-called Harris Bill, if it is enacted into law, the proposed initial price might no longer be subject to adjustment by us."

While the Commission in this proceeding must proceed under [984] the existing law, the Commission is not to be presumed to be unaware of the effect of a proposed bill now before Congress.

By its May 20th order the Commission provided an effective procedure that was fair and equitable to all parties, and provided adequate protection to Tennessee's customers and their consumers, both under the present law and under the proposed Harris Bill if enacted.

In the event of the enactment of the so-called Harris Bill, the Commission by its order of June 24, 1957 and the 5(a) procedure provided therein, has removed the protection against this very contingency that concerned the Commission as indicated by the above quotation from its May 20th order.

IX

The Commission is in error in adopting the findings of fact and conclusions of the presiding examiner in this proceeding to the extent that such findings and conclusions have been excepted to by Long Island. In support of this statement reference is made to the exceptions previously filed to the presiding examiner's findings and

conclusions by Long Island jointly with The Brooklyn Union Gas Company.

X

In its June 24 decision, the Commission made this case turn on a finding that Tennessee's customers are so sorely in need of additional gas that regardless of the price, these contracts should be approved. It is [985] respectfully submitted, however, that the record does not support that finding; indeed, the record is strangely silent on that question. The only reference in the record as to Tennessee's customers' need for this gas is the bare statement that Tennessee's purpose in making these contracts was to obtain gas reserves to supply the expansion of Tennessee's markets as shown by its application in Docket G-11, 107. No reference was ever made to Tennessee's pending proposal to expand its system to supply an entirely new mid-western market area in competition with other gas pipe line companies. Information available to the Commission elsewhere in its files casts serious doubt on the correctness of this finding. Tennessee cannot be shown on this record to be in bad shape from the point of view of reserves to supply the needs of its existing customers. The primary reason Tennessee reached for this gas and outbid everybody else was that Tennessee's expansion plans—for new markets to be served by its subsidiary, Midwestern Gas Transmission Company, rather than increased requirements for existing customers—would have depleted Tennessee's reserves to the point where a large additional supply of gas was desirable if it was to serve the expanded needs of its existing customers. Looking at the situation overall, then, this gas is

not urgently needed for Tennessee's existing customers but rather because of its proposed expansion into new markets.

Moreover, the Tennessee system has competition for the new [986] mid-western market from other pipelines and they presumably have contracted for the gas requirements of the territory they too wish to serve. If this Commission were in effect to allow each of the competing pipelines to bid up the price of gas in order to secure a supply which will be required by only one of them, the result is double pressure on the purchasing end of the gas market, which can lead only to a repetition of the chaotic markets which the CATCO contracts have already produced.

XI

The Commission's order of May 20, 1957, issued in this proceeding is a lawful and proper order, fair, equitable and just to all parties to this proceeding and should not be modified.

WHEREFORE, Long Island for the reasons herein set forth respectfully makes application to this Commission for a rehearing in this proceeding.

Respectfully submitted,

LONG ISLAND LIGHTING COMPANY

By .....
Charles E. Elbert, Secretary

Dated at Mineola, New York,
this 23rd day of July, 1957.

(Sworn to July 23, 1957.)

• • •

Application of Public Service Electric and Gas Company for Rehearing and Motion for Stay, Docket Nos. G-11024, *et al.*; Filed July 23, 1957

* * *

[991] Public Service Electric and Gas Company (Public Service), intervenor, pursuant to Section 19(a) of the Natural Gas Act, As Amended, and Section 1.34 of the Commission's Rules of Practice and Procedure, hereby applies for a rehearing of the Commission's "ORDER, UPON APPLICATION FOR REHEARING, ADOPTING INITIAL DECISION OF PRESIDING EXAMINER WITH MODIFICATIONS AND CONDITIONS", issued in these proceedings on June 24, 1957. In support hereof Public Service respectfully shows as follows:

1. On June 24, 1957, the Commission issued an order granting permanent certificates of public convenience and necessity to the above-named applicants authorizing the construction and operation of certain facilities and the sale of natural gas to Tennessee Gas [992] Transmission Company (Tennessee) from leases off the coast of Louisiana in the Gulf of Mexico. The order of June 24, 1957, changed and superseded the order of the Commission, issued in these same proceedings on May 20, 1957, which said order in turn changed and superseded the order issued April 22, 1957, in these proceedings.

In the order of April 22nd, the Commission granted temporary certificates to the applicants and stated that:

> *"The record contains insufficient evidence or testimony, however, on which to base a finding that the public convenience and necessity requires the sale of these volumes of gas at the particular rate level here proposed. The importance of this issue in certificating this sale cannot easily be overemphasized.* This is the largest reserve ever com-

mitted to one sale. This is the first sale from the newly developed offshore fields from which large proportions of future gas supplies will be taken. This is the highest price level at which the sale of gas to Tennessee Gas has been proposed.

"These factors make it abundantly evident that, in the public interest, this crucial sale should not be permanently certificated unless the rate level has been shown to be in the public interest. See *Cities Service Gas Co., Signal Oil and Gas Co.*, 14 F.P.C.—Opinion No. 288, Nos. G-2659, G-2570, November 28, 1955, affirmed as *Signal Oil and Gas Co.* v. *F.P.C.*, 238 F. 2d 771 (CA3), certiorari denied, 353 U. S. 923." (Underlining supplied.)

[993] The Commission remanded the proceedings to the Presiding Examiner to determine at what rate the public convenience and necessity requires the sale of natural gas by Continental Oil Company, The Atlantic Refining Company, Cities Service Production Company and Tidewater Oil Company (CATCO) to Tennessee to be made. The Commission further specified that the burden of proof and the burden of going forward with the presentation of evidence shall be upon the applicants herein, the CATCO companies and Tennessee.

The order of the Commission issued May 20, 1957, changed the order of April 22, 1957, by granting permanent certificates of public convenience and necessity in place of temperory certificates to CATCO, permitting the applicants to sell natural gas to Tennessee and to construct and operate the necessary facilities. This order reiterated the fact that:

Application of Public Service Electric and Gas Company For Rehearing and Motion for Stay, Docket Nos. G-11024, et al., Filed July 23, 1957

> *"As we have already stated, the record does not contain sufficient evidence on which to base a finding that the public convenience and necessity requires the sale of the gas at that particular rate level. * * *"* (Italics supplied)

Accordingly, the Commission conditioned the issuance of the certificates and required each of the CATCO companies to amend its contract with Tennessee so as to provide that the initial price shall be 18¢ per Mcf instead of 22.4¢ per Mcf.

[994] The order issued June 24, 1957, granted permanent certificates to the applicants without any condition affecting the initial price of 21.4¢ per Mcf. Concurrently with this order the Commission issued an investigation of the rates and charges of Cities Service. The order of June 24, 1957, noted that rate investigations were already proceeding with respect to the other three applicants.

In the orders issued April 22nd and May 20th, the Commission clearly found as a fact that the record does not contain sufficient evidence on which to base a finding that the public convenience and necessity requires the sale of the gas at 22.4¢ per Mcf. No evidence has been supplied or introduced since the Commission's orders of April 22nd and May 20th which would cure the fatal defect in the proof and it is, therefore, respectfully submitted that the Commission erred in departing from the findings made in its two prior orders that the record does not contain sufficient evidence on which to base a finding that the public convenience and necessity requires the sale of the gas at the rate level proposed. The factors, which the

Commission found made it abundantly evident that in the public interest this crucial sale should not be permanently certificated unless the rate level had been shown to be in the public interest, remain unchanged and still require [995] the applicants to prove that their applications are in the public interest.

2. The applicants failed to meet the requirements for the issuance of certificates of convenience and necessity in that they failed to present probative evidence that the proposed sale is or will be required by the present or future public convenience and necessity in accordance with Section 7(e) of the Natural Gas Act.

3. The Commission erred in relieving the applicants of the burden of proof and the burden of going forward with the presentation of evidence on the issue of the rate at which the public convenience and necessity requires the sale to be made. The substitution of Section 5(a) proceedings does not protect the customers of Tennessee nor the consuming public because the applicants are permitted to charge the contract price of 22.4¢ with no provision for repayment of any overcharges which might subsequently be determined.

At the proposed delivery rate of 240,000 Mcf per day, the annual payments by Tennessee to the CATCO group at the 22.4¢ price would be in excess of $19,600,000; at an 18¢ price, the annual payments would be slightly under $15,800,000, or a difference of $3,850,000 annually. The customers of Tennessee and the [996] consuming public will, as a result, be unlawfully deprived of approximately $3,850,000 per year for some years to come. It is well

known that rate investigations are time consuming and in the instant proceedings the applicants have represented to the Commission that they could not present sufficient evidence in justification of the rate within any reasonable period of time in the future. If the applicants themselves are faced with this dilemma, certainly the Commission's Staff and this intervenor would be faced with even greater difficulty, to the detriment of the ultimate consumers of the natural gas and an unlawful windfall to the producer applicants will result. Certificate applications which contain such inherent defects as to require immediate institution of a rate investigation and under which the applicants are relieved of their statutory burden of proof are unlawful and certainly not in the public interest. Section 5(a) proceedings applied to certificate applications do not adequately protect consumers within the meaning and intent of the Natural Gas Act.

4. The record in these proceedings does not contain competent material and relevant evidence which supports the finding of the Commission that the public served through the Tennessee system is greatly in need of increased supplies of natural gas.

[997] 5. The Commission erred in adopting the findings of fact and the conclusions of the Presiding Examiner that the applicants had proved by competent evidence that they are able and willing properly to do the acts and to perform the service proposed, and to conform to the provisions of the Natural Gas Act and the applicable rules, regulations, and orders of the Commission.

6. The Commission erred in that it did not attach a rate condition to the certificates which the present and

future public convenience and necessity required the Commission to do, based on the record and the law as set forth in the matters of *Cities Service Gas Company and Signal Oil and Gas Company,* Docket Nos. G-2659 and G-2570, affirmed 238 F. 2d 771, certiorari denied 353 U. S. 923.

7. The absence of competition among the four sellers as disclosed by the record imperatively requires the exercise by the Commission of its power to impose a rate condition which will assure that the services authorized will be initially rendered under reasonable rates. It would only be by coincidence that the Commission will ultimately find that the cost of service for the four companies requires the establishment of identical rates of 22.4¢ per Mcf. The order of the Commission issued June 24, 1957, assumes without any [998] proof whatsoever that this most unlikely coincidence exists.

8. The Commission erred in not imposing a rate condition because the actual price which Tennessee will be obligated to pay cannot be determined from the evidence for the reasons that:

(a) In addition to the stated initial price of 22.4¢ per Mcf, Tennessee will be required to spend over $16,000,000 in order to construct the gathering facilities.

(b) The record does not contain any evidence from which it can be determined what operating expenses will be incurred by Tennessee.

(c) Tennessee is required by the contracts to transport liquefiable hydrocarbons for the applicants at no charge.

(d) Tennessee is obligated to construct up to 40 miles of additional pipe line per year.

(e) Another condition in the contracts permits the applicants to deliver to Tennessee the higher priced offshore gas from the CATO fields in lieu of the cheaper gas presently dedicated to Tennessee from the West Delta area.

9. The Commission erred in adopting the Examiner's findings that the contracts were entered into as a result of arms-length bargaining and failed to [999] properly inquire into the relationship between the applicants concerning the negotiations leading to the contracts to sell the gas in question.

10. The Commission erred in that it adopted the Examiner's finding that the effect of the proposed service on Tennessee's rates is not an issue to be considered in this certificate proceeding.

11. The Commission erred in that it gave consideration to the representations of the applicants at the oral argument held on June 12, 1957, that they were unwilling to carry the burden of proof as to price and in the event any price conditions were imposed such as were contained in the prior orders of April 22nd and May 20th, that they would not sell the gas to Tennessee nor even in the interstate market.

WHEREFORE, Public Service respectfully requests that the Commission grant this Application for Rehearing as

Application of Public Service Electric and Gas Company For Rehearing and Motion for Stay, Docket Nos. G-11024, et al., Filed July 23, 1957

requested by this intervenor and pending such action stay the effectiveness of its order issued June 24, 1957.

Respectfully submitted,

PUBLIC SERVICE ELECTRIC AND GAS COMPANY

By: (Signed) EDWARD S. KIRBY
Edward S. Kirby
Attorney for Public Service Electric and Gas Company

Dated: Newark, New Jersey
July 19, 1957.

(Sworn to July 19, 1957)

• • •

Application of New York Commission for Rehearing and Rescission of the Order Issued June 24, 1957, Docket Nos. G-11024, *et al.*, Filed July 23, 1957

* * *

[1003] The Public Service Commission of the State of New York, an interested State Commission aggrieved by the order issued herein on June 24, 1957, hereby applies for rehearing pursuant to the provisions of Section 19(a) of the Natural Gas Act. We request the Federal Power Commission to reconsider and rescind its order of June 24, 1957, and to reaffirm either of the orders previously issued in these matters on April 22, 1957, and on May 20, 1957.

Nature of Exceptions

We except to the *conclusion* that public convenience and necessity requires or permits the issuance of permanent certificates herein at the proposed initial price of 22.4 cents per Mcf, on the ground that said conclusion is not supported by adequate evidence in the record or by adequate findings.

[1004] We except to the *finding* that the public served through the system of Tennessee Gas Transmission Company is greatly in need of increased supplies of natural gas, on the ground that there is not a shred of evidence in this record to support the finding, and on the further ground that even if a need for additional supplies at prices no higher than those currently paid may be presumed, need for gas at 22.4 cents cannot.

ARGUMENT IN SUPPORT OF APPLICATION

A. Inadequacy of the evidence to support the finding that the public served through Tennessee is greatly in need of increased supplies of natural gas.

The record in this proceeding does not contain a single word of *testimony* to suggest, let alone support the finding,

that Tennessee's customers need additional gas. The unsworn and wholly unsupported assertions of Tennessee's Counsel to the effect that certain distributing company customers, one month *before* consummation of the CATCO contract, indicated a desire for additional gas, does not fill this void. Nor is that the kind of "evidence" upon which an administrative agency may lawfully base a finding.

Our motion to consolidate Tennessee's certificate application, G-11107, with the instant proceeding in order to facilitate *proof* of such alleged "need" was opposed by the applicants and denied by the Commission by an order issued herein on March 29, 1957.

[1005] These factors (the absence of any evidence in this record of the need for gas and the applicants' unwillingness to submit such proof in this proceeding), together with the failure of any of Tennessee's customers to appear in support of the application, and Tennessee's notoriously zealous efforts to persuade opponents of the application to absent themselves from Washington, all cast considerable doubt as to how much, if any, additional gas in desired or "needed" at 22.4 cents per Mcf.

With respect to the April 22, 1957, and May 20, 1957, orders, we do not press the objection that there is no evidence to show a need for the gas, since we do not consider ourselves aggrieved by these orders. In both, the need for additional supplies at reasonable prices was assumed. The most vital aspect of that assumption—price—was left for further inquiry.

We do, however, press this objection most strenuously with respect to the June 24, 1957, order. Underlying that

order is nothing more than a wholly baseless assumption that the consuming public needs gas at any price the producers choose to exact. We respectfully submit that no one can prove that, much less assume it!

[1006] B. Inadequacy of the evidence and the findings to support the conclusion that public convenience and necessity requires or permits the sale at 22.4 cents per Mcf.

The order of June 24, 1957, reveals that the Commission has surrendered its former conviction and ridden roughshod over its former determinations as to the inadequacy of the instant record to justify the sale at 22.4 cents per Mcf, on the basis of two primary considerations: (1) the "great need" for additional gas by the public served through Tennessee, and (2) the ultimatium of the applicants to withdraw the gas from interstate commerce unless the Commission capitulated to their terms.

These considerations have been potential aspects of this case throughout this proceeding. Although they were apparent and fully appreciated on April 22 and May 20, they were not then regarded as sufficient to induce or permit the Commission to certificate unconditionally these sales at the proposed price. That the Commission was thoroughly convinced of a need for this gas long before June 24 is conclusively demonstrated by the fact that it *granted* temporary certificates on April 22 and permanent certificates on May 20. If it had not on those dates implicitly found or assumed a need for the gas, it would have been obliged to deny the applications without further inquiry.

[1007] That it is within the power and discretion of disgrunted applicants to reject certificates and withdraw

the service offered is not a novel consideration which first came to light in this proceeding on June 24. That discretion or power is implicit from start to finish in every producer-certificate case under the Natural Gas Act.

The proceeding, at this juncture, squarely presents the question of what proof is required under Section 7(e) of the Natural Gas Act to permit the issuance of certificates of public convenience and necessity.

Heretofore nothing could have been clearer than the fact that a "vital element" in the proof of public convenience and necessity was concerned with the propriety of the rates proposed in the circumstances surrounding the sale. That had been specifically decided by the Commission in the *Signal Oil* case. See *Cities Service Gas Co., Signal Oil & Gas Co.*, 12 PUR 3d 3, Nos. G-2569, G-2570, Op. No. 288, Nov. 28, 1955. It had been specifically affirmed by the Court in *Signal Oil & Gas Co., v. FPC*, (3rd Cir.) 238 F. 2d 771, cert. den. 353 U. S. 923. It had been specifically reiterated by the Commission in the April 22 and May 20 orders issued in this proceeding.

[1008] We must now consider whether a need for the gas on the part of consumers accompanied by a threat to withdraw the gas on the part of producers, unless they can exact their chosen price, either (1) eliminates the need for consideration of this "vital element", or (2) itself is proof that the rates proposed are justifiable.* It is our contention that the postulate does not lead to either result.

---

* We are unable to ascertain, after several rereadings of the June 24 order, which of these positions the Commission there adopts.

Application of New York Commission for Rehearing and Rescission of the Order Issued June 24, 1957, Docket Nos. G-11024, et al., Filed July 23, 1957

On its face, the Commission's latest order appears to proceed upon the thesis that the *greater* the demand for the gas, the *less* significant is the question of price. That view, we submit, is utterly incompatible with the Natural Gas Act. The primary, if not the sole purpose of the Natural Gas Act is to protect consumers of gas against exploitation by natural gas companies. There can be no opportunity for exploitation unless demand or need for gas exceeds the supply available on the interstate market. Where that situation occurs, that is, where a demand for gas is present, the statute mandates the Commission to protect the consumer against exploitation. It is obvious, therefore, that the *greater* the demand for gas and the *greater* the accompanying opportunity for exploitation, the *more* significance attaches to the issue of price and the *more* vigilance is required of the Commission to protect the consumer.

[1009] The phrase "public convenience and necessity" does not have a fixed content for all time and all circumstances. It is quite meaningless in itself unless it is related to and given a scope consistent with, the purposes and policies of the statute in which it is found. We find it impossible to comprehend how exploitation can be prevented, particularly in the circumstances presented in this proceeding, if the propriety of price is not to be scrutinized.

The Commission's position is not supported by authority, precedent, logic or the statute. It can only be said to constitute an abandonment of the statutory duty owed the consumer and makes it unmistakably plain to the

gas-producing and gas-consuming community alike that if the public wants gas, it is going to have to pay exactly what the producers demand for it. In other words, it would now appear that the Commission is not prepared to offer the consumer one iota more protection than he would have in the unregulated open market if Section 7(e) had never been enacted. We are not hopeful that this feature of the instant proceeding will go unnoticed by the producers.

The always-present power to reject unsatisfactory certificates and the threat to use that power has never, so far as we are aware, been thought to eliminate, modify or affect the proof required by statute to establish public convenience [1010] and necessity. It is inconceivable that it should be otherwise, or that public convenience and necessity should ever require or permit abject submission by a regulatory agency to any ultimatum of a regulated company. If the existence of the power to reject, accompanied by the threat to use it, could eliminate the necessity for proof of one "vital element" of convenience and necessity, it could as readily eliminate the necessity for proof of all other elements. It could justify the issuance of certificates on nothing more than an application together with a threat to reject any certificate which failed to grant everything the application demanded. In the *Signal* case, where the power to reject certificates was every bit as real as it is here, the Commission nevertheless held that proof of the propriety of price was required. Can it be said that the truisms therein espoused become gibberish when the applicant bespeaks himself of that power?

Application of New York Commission for Rehearing and Rescission of the Order Issued June 24, 1957, Docket Nos. G-11024, et al., Filed July 23, 1957

It may be quite true that under the Natural Gas Act the Commission is powerless to compel the dedication of additional gas to interstate commerce. We do not believe, however, that that fact permits emasculation of the provisions of the statute which direct the Commission to control and regulate, for the benefit of the consumer, the terms, conditions and prices at which interstate gas shall flow. The mandate of Section 7(e) that the Commission must scrutinize price in order to fulfill its statutory obligation to protect consumers against exploitation, cannot be ignored simply because applicants *may* be so [1011] ill-advised as to make good their threats to kill the goose that lays their golden egg.

CONCLUSION

The requirement of Section 7(e) of the Natural Gas Act that each applicant prove that public convenience and necessity requires the sale of his gas in interstate commerce at his proposed rate, as enunciated by the Commission in the *Signal Oil* case, as confirmed by the Court in *Signal Oil & Gas Co.* v. *FPC, supra,* and as again reiterated by the Commission on April 22 and May 20, cannot be discharged, nor may the need for such proof be eliminated, simply by noting that the public demands gas and the producers have the power to withhold it.

It is impossible to ignore the fact that the importance of this case now far exceeds the limited issues originally presented. If unsupported allegations of need for gas and untested threats to withhold it will effectively emasculate all semblance of certificate and price regulation, the

lesson is clear not only to the present applicants, but to all producers of natural gas.* On the other hand, if the Commission stands [1012] firm upon its own convictions and upon its judicially blessed interpretation of the requirements of proof under the Natural Gas Act, there is no reason to anticipate dire results. No one can reasonably suggest that all future supplies of gas can be economically marketed in their states of origin. Indeed we are firmly convinced that if the CATCO gas could have been marketed in Louisiana anywhere nearly as profitably as it can in interstate commerce, it would have been sold there long before this. But in any event, when they or any other natural gas companies turn to interstate markets, it should be on terms fully disclosed to and approved by the Federal Power Commission, which has the statutory obligation of protecting the public interest, and not on the terms arrogantly and irresponsibly dictated by the applicants.

The order of June 24, 1957 should be rescinded and either of the orders of April 22 or May 20, 1957 reaffirmed. The evidence in this record is totally inadequate to

* In fact, the pattern is already becoming sharply defined. In its July 12, 1957 order, issued in *Southern Natural Gas Co., et al.*, Doc. Nos. G-11234, *et al.*, the Commission has not only granted certificates of convenience and necessity on inadequate proof pertaining to price, but also has even refused to permit intervention by the New York Commission, thereby precluding any presentation of the issue of the sufficiency of the record in this respect.

support the conclusion that the sale at 22.4 cents per Mcf is required by public convenience and necessity.

Respectfully submitted,

PUBLIC SERVICE COMMISSION OF
THE STATE OF NEW YORK
By /s/ KENT H. BROWN
Kent H. Brown
Counsel
55 Elk Street
Albany 1, New York

Dated: July 22, 1957

(Sworn to July 22, 1957)

• • •

VOLUME II

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1958

No. 518

THE ATLANTIC REFINING COMPANY, CITIES SERVICE PRODUCTION COMPANY, CONTINENTAL OIL COMPANY, ET AL., PETITIONERS,

vs.

PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK, LONG ISLAND LIGHTING COMPANY, PUBLIC SERVICE ELECTRIC AND GAS COMPANY.

No. 536

TENNESSEE GAS TRANSMISSION COMPANY, PETITIONER,

vs.

PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK, LONG ISLAND LIGHTING COMPANY, AND PUBLIC SERVICE ELECTRIC AND GAS COMPANY.

ON WRITS OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

NO. 518 PETITION FOR CERTIORARI FILED NOVEMBER 14, 1958
NO. 536 PETITION FOR CERTIORARI FILED NOVEMBER 24, 1958
CERTIORARI GRANTED JANUARY 12, 1959

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IN THE UNITED STATES COURT OF APPEALS
FOR THE THIRD CIRCUIT

No. 12401

PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK,
Petitioner,

v.

FEDERAL POWER COMMISSION, Respondent.

PETITION FOR REVIEW OF AN ORDER OF THE FEDERAL POWER COMMISSION—Filed October 7, 1957

To the Honorable the Judges of the United States Court of Appeals for the Third Circuit:

The petition of the Public Service Commission of the State of New York (hereinafter called "petitioner"), being a petition for review, under Section 19(b) of the Natural Gas Act, 15 U. S. C. A. §717r(b), of an order of the Federal Power Commission (hereinafter called "respondent"), dated June 24, 1957, issued in respondent's consolidated proceeding entitled "*In the Matters of Continental Oil Company,* Docket No. G-11024, *The Atlantic Refining Company,* Docket No. G-11034, *Cities Service Production Company,* Docket No. G-11046 and *Tidewater Oil Company,* Docket No. G-11049," respectfully shows:

[fol. 478]

I.

Parties.

Petitioner, a party to the proceeding below is a Commission created and existing under the laws of the State of New York and is composed of Benjamin F. Feinberg, Chairman, Spencer B. Eddy, Francis T. Mylott, Richard H. Balch, and Aaron L. Jacoby, Commissioners, who are the duly appointed, qualified and acting members of said Com-

mission. Said Commission and the members thereof perform their official duties and have their principal offices at 55 Elk Street, in the City of Albany, State of New York. Petitioner is directed and authorized by Article 4 of New York Public Service Law to exercise general regulatory supervision over gas corporations in the State of New York, including supervision over rates and charges of said companies.

Respondent, the Federal Power Commission, is a Commission created and existing under the laws of the United States and is composed of Jerome K. Kuykendall, Chairman, Seaborn L. Digby, Frederick Stueck, William R. Connole, and Arthur Kline, Commissioners, who are the duly appointed, qualified and acting members of said Commission. Said Commission and the members thereof perform all of their functions and official duties and have their principal offices at 441 G Street, N. W., in the City of Washington, District of Columbia.

II.

Jurisdiction and Venue.

Petitioner was a party in each of four proceedings under Section 7 of the Natural Gas Act before respondent Federal Power Commission entitled respectively "*In the Matter of Continental Oil Company,* Docket No. G-11024", "*In the Matter of Atlantic Refining Company,* Docket No. 11034", [fol. 479] "*In the Matter of Cities Service Production Company,* Docket No. G-11046" and "*In the Matter of Tidewater Oil Company,* Docket No. G-11049" which proceedings were consolidated by order of the respondent Federal Power Commission and heard on a single record. Petitioner is aggrieved by the final order issued therein on June 24, 1957. Jurisdiction and venue are established in this Court by the provisions of Section 19(b) of the Natural Gas Act, 15 U. S. C. A., §717r(b), applicants Continental Oil Company, Cities Service Production Company and Tidewater Oil Company having been incorporated in and under the laws of the State of Delaware and applicant The Atlantic Refining Company having been incorporated in and under the laws of the State of Pennsylvania. Each of the afore-

said applicants are natural gas companies to which the order of June 24, 1957 relates and, as indicated, each is located within the jurisdiction of this Court.

III.

Nature of Proceedings as to Which Review is Sought.

This petition presents to the Court for review a decision and order, issued by respondent Federal Power Commission on June 24, 1957. True copies of said decision and order entitled "Order, Upon Application for Rehearing, Adopting Initial Decision of Presiding Examiner With Modifications and Conditions," together with a true copy of the dissenting opinion by Commissioner Connole, are annexed hereto as Exhibit A.

The proceeding arose under the certification provisions of Section 7(c) and (e) of the Natural Gas Act, 15 U. S. C. A., §717f(c) and (e).

(a) The CATCO applications.

By applications filed during the first half of September 1956, Continental Oil Company, The Atlantic Refining Company, Cities Service Production Company and Tidewater [fol. 480] Oil Company (hereinafter called "CATCO applicants") applied for certificates of public convenience and necessity pursuant to Section 7(c) of the Natural Gas Act, 15 U. S. C. A., §717f(c) for the sale of natural gas from leases in the Gulf of Mexico, offshore the coast of Cameron and Vermilion Parishes, Louisiana, to Tennessee Gas Transmission Company (hereinafter called "Tennessee"), pursuant to contracts dated during August, 1956 between each seller and Tennessee.

The CATCO applicants are extensively engaged in the production of natural gas in and offshore the coast of the State of Louisiana. Tennessee is a gas transmission company engaged in the transportation and sale for resale in interstate commerce of gas from the southwestern area of the United States to the northeastern states. It is an important supplier of natural gas to distributors in New York State, through sales directly to some and indirectly to others.

The sales contracts for which approval was sought are identical in all material respects, each containing provision for daily delivery of 240,000 Mcf of gas for the first year at an initial price of 22.4¢ per Mcf (including 1¢ tax reimbursement) and providing for periodic, automatic increases in price of 2¢ every four years thereafter, reaching a terminal price of 35.4¢ per Mcf in 1986. On information and belief, the proposed initial contract price was higher, and the proposed periodic price increases were steeper than those of any previously certificated sale by a producer to a pipeline company in the southwest. The initial contract price is 4.4¢ per Mcf higher than the highest price hitherto paid by Tennessee. The contracts, as approved, would involve annual payments by Tennessee to the four applicants of $20,000,000.

(b) The Tennessee application.

Concurrently, by application dated September 19, 1956, Tennessee also applied for a certificate of public convenience and necessity pursuant to Section 7(c) of the Natural Gas Act, 15 U. S. C. A., §717f(c) for authority to institute [fol. 481] a construction program for the expansion of its system. The amount required for the construction of facilities to bring the CATCO gas, located offshore continental United States, to dry land is alleged to be $16,315,412. By order issued March 8, 1957, respondent Federal Power Commission denied petitioner's motion to consolidate Tennessee's certificate application with the previously consolidated, related CATCO certificate applications.

(c) The hearings.

Pursuant to a notice issued February 8, 1957, hearing on the CATCO applications was held February 28, 1957 and concluded the following day. Intervention by petitioner was acknowledged, and intervention by Tennessee and four distributing company customers of Tennessee (Brooklyn Union Gas Company, Long Island Lighting Company, Public Service Electric & Gas Company, and Lake Shore Pipeline Company) was permitted by order of the respondent Federal Power Commission issued February 27, 1957. Of

the six interveners, only Tennessee participated actively and affirmatively in support of the applications as filed.

(d) The decision of the Presiding Examiner.

The intermediate decision of the Presiding Examiner was issued March 29, 1957, a true copy of which is annexed hereto as Exhibit B. The Examiner refused petitioner's request, contained in its initial and reply briefs, that the issuance of certificates of public convenience and necessity be conditioned upon amendment of the contracts to provide for lower initial prices and more gradual periodic increases, and recommended issuance of permanent certificates substantially as requested in the CATCO applications. Petitioner promptly filed exceptions to the intermediate decision of the Presiding Examiner.

(e) The Commission Order of April 22, 1957.

In its "Findings and Order Issuing Temporary Certificates of Public Convenience and Necessity", issued April [fol. 482] 22, 1957, a true copy of which is annexed hereto as Exhibit C, respondent Federal Power Commission adopted the Presiding Examiner's findings as to the CATCO applicants' ability and willingness to deliver gas and as to Tennessee's need to acquire gas, but found insufficient evidence in the record on which to base a finding that public convenience and necessity required the sale at the proposed initial price. In keeping with its precedent established in *Cities Service Gas Co., Signal Oil and Gas Co.*, 14 F. P. C. , Op. No. 288, Nos. G-2569, G-2570, November 28, 1955, affirmed as *Signal Oil and Gas Co.* v. *F.P. C.*, 3rd Cir., 238 F. 2d 771, cert. den. 353 U. S. 923, respondent authorized the issuance of temporary certificates of public convenience and necessity and remanded the proceeding to the Presiding Examiner to determine at what rate public convenience and necessity required the sale. It also granted applicants' and Tennessee's request for the issuance of a temporary certificate to Tennessee for the construction of facilities to bring the gas from the offshore location to dry land.

(f) The CATCO motion for modification.

On May 6, 1957, the CATCO applicants filed an application for rehearing, notifying respondent that they would refuse to accept temporary certificates on the terms and conditions set forth in respondent's April 22 order, and offering certain immaterial and valueless modifications of the original contracts in exchange for permanent and unconditional certificates. Said application was supported by Tennessee and opposed by petitioner.

(g) The Commission order of May 20, 1957.

In its "Findings and Order Issuing Permanent Certificates of Public Convenience and Necessity and Modifying Previous Order", issued May 20, 1957, a true copy of which is annexed hereto as Exhibit D, respondent accepted the CATCO applicants' proposed modifications and authorized the issuance of permanent certificates as requested. [fol. 483] Reiterating its conclusion as to the insufficiency of the evidence to support a finding that public convenience and necessity required the sale at the proposed rate, respondent imposed the following conditions:

> 1. That the CATCO applicants and Tennessee amend the contracts to provide for an initial price of 18¢ per Mcf (including 1¢ tax reimbursement); and
>
> 2. That the contracts be further amended to permit the CATCO applicants to file for a rate increase up to 22.4¢ per Mcf, said increased price to become effective one day after the commencement of deliveries—with explicit "assurances" by the Commission to the producer-sellers that the Commission would, at that point, limit the exercise of its powers of rate suspension (Section 4 of the Natural Gas Act, 15 U. S. C. A. §717c) to a maximum period of 24 hours.

The effect of the May 20 order would have been to permit the CATCO applicants to collect the originally proposed contract price of 22.4¢ per Mcf, but to require them to demonstrate that said price was just and reasonable, pursuant to the provisions of Section 4 of the Natural

Gas Act or, failing that, to refund any amounts collected in excess of 18¢ per Mcf.

(h) The Tennessee application for rehearing.

On June 3, 1957, Tennessee, but not the CATCO applicants, filed an application for rehearing and reconsideration of respondent's May 20 order. Therein Tennessee notified respondent that the CATCO applicants would refuse to accept the permanent certificates under the conditions prescribed in respondent's May 20 order.

Pursuant to its order of June 6, 1957 granting rehearing, respondent heard oral argument on June 12, 1957. Petitioner appeared in support of either respondent's April 22 or its May 20 order.

[fol. 484] (i) The Commission's order of June 24, 1957.

Thereafter, on June 24, 1957, the order complained of herein (Exhibit A) was issued, on the decision of three Commissioners (Commissioner Stueck, Acting Chairman, Commissioners Digby and Kline), Commissioner Connole vigorously dissenting.

Thereafter, on July 23, 1957, petitioner applied for rehearing of respondent's June 24 order. A true copy of the application is annexed hereto as Exhibit E. The latter application was denied by an order issued August 15, 1957, a true copy of which is annexed hereto as Exhibit F.

IV.

Grounds Upon Which Relief Is Sought.

Respondent's June 24, 1957 determination and order authorizing the issuance of permanent unconditional certificates of public convenience and necessity to the CATCO applicants are contrary to law, arbitrary, capricious and invalid, in the following respects:

1. Respondent's June 24, 1957 determination and order were not supported by substantial evidence.

A. Certificates of public convenience and necessity for sales of gas by producers to interstate pipeline companies

cannot properly be issued under Section 7 of the Natural Gas Act without consideration of all aspects thereof including the price or prices at which said sales are to be made. The respondent in each of its orders, issued respectively April 22, May 20 and June 24, 1957, recognized and held that consideration of such prices was a vital element in the determination in these cases.

There was no evidence whatever in the record before the respondent that the contract prices at which the sales were proposed to be made were in the public interest; that the sales at such prices were required by public convenience and necessity; or that Tennessee or the consuming public required the proposed supply of natural gas by the CATCO [fol. 485] applicants under the prices and price conditions contained in the CATCO contracts with Tennessee.

B. The respondent's June 24, 1957 order represents a complete reversal of its previous determinations of April 22, 1957 and May 20, 1957. It was founded upon the assumptions (1) that the CATCO supply of gas was required by Tennessee and the consuming public, regardless of the price, and (2) that unless the Commission issued certificates of convenience and necessity in the form acceptable to the CATCO applicants, this supply of gas would not be made available to Tennessee and would be withdrawn from the interstate market.

There is no evidence whatever in the record before the respondent to sustain these assumptions. There is no substantial evidence that the proposed supply of gas is so essential to the needs of Tennessee and the consuming public that price considerations should be completely disregarded in the manner reflected in the June 24, 1957 order. Moreover, there is no substantial evidence in the record to sustain a conclusion that the proposed supply of gas could be used for any other purpose or would actually be withheld from Tennessee and the consuming public served by Tennessee's facilities, or from the interstate market.

2. The respondent's June 24, 1957 determination and order were arbitrary and capricious.

In its earlier orders of April 22, 1957 and May 20, 1957, the respondent specifically found that the record did not establish that the proposed sales of gas by the CATCO applicants to Tennessee at the prices and price conditions contained in such contracts, were in the public interest or required by public convenience and necessity. The June 24, 1957 determination and order were made upon the identical record, without additional testimony or evidence of any kind. Yet the findings therein contained were diametrically the opposite. The only new factor involved in the final determination and the sole inspiration therefor was the threat by the CATCO applicants to withdraw from [fol. 486] their contracts with Tennessee and to withhold their gas from the interstate market.

The record before the respondent did not justify the reversal of its previous orders upon the basis of such a threat. The abject submission of the respondent to that threat, in complete negation of its statutory responsibilities under the Natural Gas Act to protect the consumer interests, was unlawful, arbitrary and capricious.

V.

Relief Prayed.

Petitioner prays:

1. That a certified copy hereof be forthwith served according to law upon a member of the Federal Power Commission and that the Federal Power Commission be required in conformity with law to certify to and file with this Court a transcript of the record in the proceeding entitled *"In the Matters of Continental Oil Company, et al.,* Docket Nos. G-11024, *et al.,"* wherein the order complained of was entered.

2. That said proceeding and the decision and order issued therein on June 24, 1957 be reviewed by this Court; that said order be set aside, vacated and annulled in its entirety and the proceeding be remanded to the respondent Federal Power Commission.

3. That this Court exercise its jurisdiction and grant to petitioner such other and further relief in the premises

as the rights and equities of the cause may require and as may seem just and reasonable to this Court.

Respectfully submitted,

Public Service Commission of the State of New York,
By /s/ Kent H. Brown, Counsel.

October 7, 1957.

[fol. 487] *Duly sworn to by Kent H. Brown, jurat omitted in printing.*

[fol. 488]

EXHIBIT A TO PETITION

Order, Upon Application for Rehearing, Adopting Initial Decision of Presiding Examiner with Modifications and Conditions.

UNITED STATES OF AMERICA

FEDERAL POWER COMMISSION

Before Commissioners: FREDERICK STUECK, Acting Chairman; SEABORN L. DIGBY, WILLIAM R. CONNOLE and ARTHUR KLINE.

IN THE MATTERS OF CONTINENTAL OIL COMPANY THE ATLANTIC REFINING COMPANY CITIES SERVICE PRODUCTION COMPANY TIDEWATER OIL COMPANY	Docket No. G-11024 Docket No. G-11034 Docket No. G-11046 Docket No. G-11049

(Issued June 24, 1957)

On June 4, 1957, Tennessee Gas Transmission Company (Tennessee Gas) filed an application for rehearing and reconsideration of the Commission's order issued in these

proceedings on May 20, 1957. By order issued June 6, 1957, we granted rehearing and in such order provided for oral argument "upon the contentions made and issues presented by the application for rehearing, the motion for modification and the answers thereto heretofore filed in these proceedings."[1]

[fol. 489] Pursuant to the order granting rehearing we heard oral argument on June 12, 1957.

The Commission's order issued May 20, 1957, modified an earlier order issued April 22, 1957, granting temporary certificates of public convenience and necessity to CATCO and to Tennessee Gas in Docket No. G-11107.

The temporary certificates issued by our order of April 22, 1957, authorized CATCO to sell natural gas to Tennessee Gas from CATCO's leases in the East Cameron, West Cameron and Vermilion areas off the coast of Louisiana in the Gulf of Mexico, and authorized Tennessee Gas to construct and operate approximately 107 miles of pipeline from the off-shore platforms of CATCO to a point on its main system of Kinder, Louisiana.

The contracts for the sale of gas executed between each of the CATCO companies and Tennessee Gas which are exhibits in these proceedings provide for an initial price of 21.4 cents per Mcf[2] and for a definitely fixed price escalation of two cents per Mcf every four years.

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[1] On May 6, 1957, Continental Oil Company, The Atlantic Refining Company, Cities Service Production Company and Tidewater Oil Company (collectively referred to as CATCO) filed a motion for modification of the Commission's order issued April 22, 1957, granting temporary certificates of public convenience and necessity to CATCO and Tennessee Gas and directing that the proceedings "be remanded to the presiding examiner to determine at what rate the public convenience and necessity requires the sale of natural gas by CATCO to Tennessee Gas to be made if these CATCO companies are granted permanent certificates of public convenience and necessity." Answers to the motion were filed by New York Public Service Commission, Lake Shore Pipe Line Company, Brooklyn Union Gas Company and Long Island Lighting Company (jointly), and Public Service Electric and Gas Company (collectively referred to as Intervenors) opposing the motion. Tennessee Gas filed an answer supporting the motion.

[2] Reimbursement for the one-cent Louisiana gathering tax would be added to this amount.

As has been indicated hereinbefore, the CATCO companies filed a motion for modification of the Commission's order issued April 22, 1957. In the motion the CATCO companies indicated that they were unwilling to accept temporary certificates of public convenience and necessity under the conditions specified in the Commission's order. They, however, proposed that the Commission issue permanent certificates permitting them to charge the initial agreed-upon price of 21.4 cents per Mcf, but agreed to modify therein respective contracts for the sale of natural gas to Tennessee Gas in such manner that the future price escalations contained in the contracts would remain subject [fol. 490] to the Commission's scrutiny and jurisdiction in the event that the Harris Bill, H.R. 6790, 85th Cong., were enacted into law. The proposed contract amendments would provide that if the Harris Bill were enacted, the price for gas would escalate up to the then current reasonable market price but not more than two cents per Mcf every four years.

In response to the motion we issued our May 20, 1957, order in which we granted permanent certificates of public convenience and necessity to the CATCO companies on condition that the contracts between the CATCO companies and Tennessee Gas be amended so as to provide for an initial price of 17 cents per Mcf, with provision for filing a request for an increase in such price to 21.4 cents per Mcf one day after the initial price became effective. Under the condition provision was also made for the incorporation in such contract of indefinite price escalations, with a ceiling increasing by two cents every four years.

In its application for rehearing filed June 4, 1957, Tennessee Gas has stated that it had been advised that the CATCO companies were unwilling to accept the permanent certificates of public convenience and necessity granted by the May 20, 1957, order because they objected to the pricing and other conditions specified in the order, and that they would terminate the contracts so that the large supply of gas contained in the off-shore reserves of the CATCO companies would not become available to the customers of Tennessee Gas. At the oral argument it became apparent that the CATCO companies objected to the 17-cent initial

price set in the May 20, 1957, order. On the other hand, the CATCO companies indicated that they would still be willing to amend their contracts as proposed in their motion of May 6, 1957. They indicated further that if they failed to obtain certificates without price conditions which they considered objectionable, they would seek to dispose of their gas elsewhere than to Tennessee Gas and the interstate market.

In the present status of the case we are left with the difficult problem of how to assure the delivery of this gas to the large market served by Tennessee Gas, and at the [fol. 491] same time protect the consumers from an unreasonably high price. In reaching a solution to this problem we are moved by the primary consideration that the public served through the Tennessee Gas system is greatly in need of increased supplies of natural gas. Further, it appears to us, important as is the issue of price, that as far as the public is concerned, the precise charge that is made initially is less important than the assurance of this great supply of gas. In view of these circumstances and the fact that the record does not show that the 21.4-cent rate is necessarily excessive, we agree with the presiding examiner that this certificate proceeding under Section 7 of the Natural Gas Act should not assume the character of a rate proceeding under Section 5(a). We are of the opinion that, in the circumstances of this case, in view of the great demand for gas by customers of Tennessee Gas, the price consideration should not be made the prime determinant of what the public convenience and necessity require. By virtue of the authority conferred upon us by Sections 4 and 5 of the Natural Gas Act and the proposal to modify the contracts made by the CATCO companies, we are of the opinion that we will be able to adequately protect the public interest with respect to the matter of price. In order, therefore, to insure that deliveries of gas by the four CATCO companies to Tennessee Gas will commence as promptly as possible, we will grant permanent certificates to them by this order without any condition affecting the initial price of 21.4 cents per Mcf.

However, because the 21.4-cent price, as we have heretofore observed, is higher than Tennessee Gas is paying

under any other contract, it should be subject to prompt investigation under Section 5(a) as to its reasonableness. In this connection, we may note that when three of the CATCO companies, Continental Oil, Atlantic Refining and Tidewater Oil file their contracts with Tennessee Gas as rate schedules as required by the Natural Gas Act and our Regulations, such contracts will be subject to rate investigations now outstanding against these companies. Thus, by our order issued January 27, 1956, in Docket Nos. G-9283 [fol. 492] and G-9284, we instituted an investigation of any of the rates or charges of Atlantic Refining and Tidewater Oil with respect to any transportation or sale of natural gas subject to our jurisdiction, and by our order issued the same day in Docket No. G-9279, we instituted a similar investigation of the rates and charges of Continental Oil. Concurrently with this order we are instituting in Docket No. G-12780 an investigation of the rates and charges of Cities Service. By this means relief can be afforded to the consuming public if it should be found that the 21.4-cent initial rate to be charged for the off-shore gas is excessive.

It appears to be true that if the Harris Bill, H. R. 6790, 85th Congress, or some bill similar to it, becomes law that we may lose continuing supervision over the future increased prices provided in the several contracts between the CATCO companies and Tennessee Gas. Therefore, we shall adopt the proposal of the companies made in their motion for modification of May 6, 1957, that they amend their contracts so that the price increases will remain subject to our control by using "indefinite pricing clauses" rather than "definite pricing clauses" within the meaning of the Harris Bill. They propose to do this, as indicated above, by providing that the initial sales price shall be 21.4 cents per Mcf until November 1, 1962, as at present, but after that the "reasonable market price" within the meaning of the bill and as determined by this Commission shall prevail. Adjustments would be initiated by the sellers at four-year intervals but would be limited by the step increases now provided in the contracts. The CATCO companies state that Tennessee Gas is agreeable to this arrangement and will enter into such an amendment with each of the CATCO companies.

The Commission finds:

(1) It is necessary and appropriate in the public interest to adopt the initial decision of the presiding examiner with modifications and conditions and to modify the Commission's order issued May 20, 1957, in the above-entitled proceedings, in the manner set forth below.

[fol. 493] (2) The CATCO companies are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules, and regulations of the Commission thereunder.

(3) The sales of natural gas by the CATCO companies to Tennessee Gas, as referred to above, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the public convenience and necessity, and permanent certificates therefor should be issued as hereinafter ordered and conditioned.

The Commission orders:

(A) Permanent certificates of public convenience and necessity are hereby issued to the CATCO companies, without further hearing, authorizing the sale of natural gas to Tennessee Gas, from CATCO's leases in the East Cameron, West Cameron and Vermilion areas off the coast of Louisiana in the Gulf of Mexico, together with the construction and operation of any facilities, subject to the jurisdiction of the Commission, used for such sale, as hereinbefore described and as more fully described in the applications in this proceeding.

(B) Each of the CATCO companies, within 20 days after the issuance of this order, shall file with the Commission a duly executed amendment to the contract submitted as an exhibit to its certificate application providing for sale of natural gas to Tennessee Gas embodying the following language:

> If and in the event that H. R. 6790 or any substantially similar legislation is enacted into law by the 85th

Congress, and becomes effective, then the provisions of Section 10, *Prices*, commencing with the portion thereof reading

[fol. 494] "From the date of initial delivery or November 1, 1957, whichever occurs first, until November 1, 1962..... 21.4 Cents per MCF"

to and including that portion thereof reading

"From November 1, 1986 to expiration of this contract.... 35.4 Cents per MCF"

is hereby deleted, and the following is substituted in lieu thereof:

From the date of initial delivery or November 1, 1957, whichever occurs first, and thereafter ..... 21.4 Cents per MCF

Provided that, After November 1, 1962, Seller shall be entitled to receive and Buyer shall pay the reasonable market price, if higher than 21.4 cents per Mcf, for the gas at the points of delivery within the limitations and subject to the terms and conditions as hereinafter set forth. Such reasonable market price shall be that as fixed by the Federal Power Commission under applicable law, after initial determination thereof by Seller as herein provided. If Seller should determine that the reasonable market price for the gas at the points of delivery for any of the 4-year periods hereinafter listed would be in excess of the price then being paid hereunder, Seller may notify Buyer, not less than eight months prior to the commencement of such period, of the price to be paid by Buyer hereunder during such period and until a subsequent determination by Seller in accordance herewith is made effective. Any price so determined and fixed shall not be less than 21.4¢ per Mcf and not more than:

23.4 Cents per MCF..... From November 1, 1962 to November 1, 1966

25.4 Cents per MCF..... From November 1, 1966 to November 1, 1970

[fol. 495] 27.4 Cents per MCF..... From November 1, 1970 to November 1, 1974

29.4 Cents per MCF..... From November 1, 1974 to November 1, 1978;

and, in the event the term of this contract is extended hereunder beyond November 1, 1978, then not more than

31.4 Cents per MCF..... From November 1, 1978 to November 1, 1982

33.4 Cents per MCF..... From November 1, 1982 to November 1, 1986.

35.4 Cents per MCF..... From November 1, 1986 to the expiration of this contract.

Except as altered hereinabove, the provisions of Section 10, *Prices*, shall remain unaffected and in full force and effect.

(C) The certificates issued herein shall be accepted in writing and under oath by each of the CATCO parties, each of whom shall be authorized to commence service upon acceptance and upon completion of construction of the "offshore facilities" by Tennessee Gas. Each acceptance shall be accompanied by a resolution of the Board of Directors of the accepting company duly authenticated indicating the approval of the acceptance of the certificates hereby granted.

(D) The certificates issued herein are not transferable and shall be effective only so long as each CATCO company continues the acts or operations hereby authorized in accordance with the provisions of the Natural Gas Act, and the applicable rules, regulations and orders of the Commission.

(E) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or of Part 154 of the Commission's [fol. 496] Rules and Regulations thereunder requiring the filing of rate schedules for the services herein authorized; and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the CATCO companies. Further, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objection relating to the operation of any price or related provision in the gas purchase contracts herein involved.

(F) The findings of fact and the conclusions of the presiding examiner are hereby adopted except where inconsistent with this order.

(G) Our order issued May 20, 1957, is hereby modified to the extent that it is inconsistent with this order.

By the Commission. Commissioner Connole dissenting.

JOSEPH H. GUTRIDE,
Secretary.

IN THE MATTERS *of* CONTINENTAL OIL COMPANY, *et al.*	Docket No. G-11,024 *et al.*

(Issued June 24, 1957)

CONNOLE, Commissioner, *dissenting*:

The manifest unwillingness of the producers here involved to submit to properly constituted public authority the prices at which they propose to make these significant sales in interstate commerce has precipitated a crisis for

consumers and Commission far out of proportion to the [fol. 497] importance of the immediate proceeding. The depth of the crisis was well expressed at the oral argument of June 12, 1957. Producers represented that unless we abandoned our position in this matter it would be their decision to withdraw this gas from the interstate market. Representatives of consuming interests and of metropolitan distributing companies contended it would be preferable to risk curtailment of expansion and, by necessary implication, certainty of supply rather than to permit the Commission to depart from the position taken in our prior Orders in this docket.

This proceeding is another example of the manner in which the skyrocketing demand for natural gas is severely straining the industry's price structure. Demand threatens to elevate price levels beyond customer tolerance. As a result each proposed sale at new high price levels must be evaluated with particular care. Avoiding the disastrous consequences of a collision between consumers' needs for additional gas and producers' demands for additional compensation is particularly difficult in this proceeding because producers have presented the Commission with an almost classic Hobson's choice. In addition, the issues have become expanded in scope and effect until far more than the initial price level of this particular sale is involved. As I see it, the validity of the Commissioner's judicially approved right to attach a rate condition to certificates of public convenience and necessity when it is called for, and in fact, the very inviolability of all Commission orders is at issue here.

It is clear from the history of this proceeding that we have made unprecedented efforts to ensure fair treatment, that we have clearly evidenced our intention to cooperate in arriving at an initial price level that would be just and reasonable to all parties affected. Despite these efforts, however, the producers remain adamant. Despite ample administrative and judicial authority to the contrary[1] they

[1] See *Cities Service Gas Co., Signal Oil and Gas Co.*, 14 F. P. C. Opinion No. 288, Nos. G-2569, G-2570, November 28, 1955, affirmed as *Signal Oil and Gas Co.* v. *F. P. C.*, 238 F. 2d 771 (CA3), *certiorari* denied 353 U. S. 923.

[fol. 498] insist that a proposal to make a sale of natural gas in interstate commerce is not subject to regulatory review to determine if the public interest requires that it be made at the prices proposed.

The record is plain that the controlling reason the parties refuse to submit their contracts to regulatory review in the manner found to be necessary in the public interest is their preference for a proceeding in which the burden would be on the Commission to establish that the rate was more than reasonable. They flatly refuse to submit to one in which the parties would be required to show only that the rate was required by the public convenience and necessity. No citation of authority or reference to regulatory theory is needed to demonstrate that the burden of showing the public convenience and necessity requires a proposed service at a particular price level is on the party seeking to take advantage of the proposed service and not on the tribunal before which the case is to be made. Under the unique conditions found here, the critical importance of that decision is indisputable.

So much has been said in other forums, so many and so unanimous are the authorities in support of it, that to argue the validity and equity of the procedure contemplated by our prior Orders and supported by the *Signal Oil* case, *supra*, would serve no useful purpose now. At this tardy date the unbeliever needs inspiration, not persuasion, if the veil of obstinacy is to be removed from his eyes.

Of more immediate consequence, however, is the dilemma into which the refusal has placed this Commission and the consumers whose interest we must protect: Denial of essential supplies on the one hand, and on the other, inadequate protection against unjust and unreasonable rates.

It contributes nothing to argue that the issue here is sanctity of contract. When it applies, no one feels the force of that argument more keenly than I. And when it was threatened, I spoke out against it. For example, see my separate statement *In the Matters of American Louisiana Pipe Line Company, et al.*, G-10396, *et al.*, issued January 11, 1957.

[fol. 499] But no contract terms are involved here. No party questions the manner in which the other has carried out its part of a bargain. If anything, an essential party to the contracts has been crowded out of the bargaining table. And rather than to permit the public interest a place, the bargainers would turn the table upside down and walk away from the entire proceeding.

Plain facts are that the gas has been placed on the interstate market on one set of terms and one only. This Commission and the consumers who have made irrecoverable investments in order to use it, are given no choice but to accept. The arbitrary nature of this position appears from an examination of the orders which have been rejected by the producers.

No voice has been raised to dispute the facts that were set out so clearly in our Order of April 22, 1957. To my legal understanding, they are still facts. A few sentences will illustrate (pg. 2, mimeo):

> "The record contains insufficient evidence or testimony however, on which to base a finding that public convenience and necessity requires the sale of these volumes of gas at the particular rate level here proposed. The importance of this issue in certificating this sale cannot easily be over-emphasized. This is the largest reserve ever committed to one sale. This is the first sale from the newly developed offshore fields from which large proportions of future gas supplies will be taken. This is the highest price level at which the sale of gas to Tennessee Gas has been proposed.
>
> "These factors make it abundantly evident that, in the public interest, this crucial sale should not be permanently certificated unless the rate level has been shown to be in the public interest. . . ."

No effective objection has been made to our Order of May 20, 1957. The upper limit of the price range used by the Commission in that Order was set by the contracts themselves which the record discloses contain the highest [fol. 500] of at least four bid prices. The lower limit was urged by disinterested public authority intervenors and

supported by evidence of record showing, among other things, that it was the highest price presently being paid by Tennessee Gas for the purchase of any gas produced in the Southwest area. Effectively, the Order provided a floor which the rates would not penetrate, an assurance notably lacking in the Section 5(a) procedure so zealously embraced by the applicants. And still the refusal persists.

Nothing but threats by the producers supports the proposition that this gas would be barred forever from the interstate market. And the very quantity of offshore gas affected by this decision makes it clear that the only practical market for gas of this kind for years to come is to the large consuming areas served by the long haul interstate pipelines. In my judgment the pricing pattern should not be set for so crucial a supply source in an atmosphere charged with urgency and in response to arguments whose primary motivation is private, not public, gain. The election by the producers to reject their public responsibility and insist on exercising the full strength of their bargaining position has altered completely the impact of logical and equitable arguments.

The decision of the majority is justifiable only by the evil consequences of the loss of these reserves to the particular pipeline which is a party to the contracts. Such evils would, in the opinion of the majority, exceed the gain to follow from the proof that the public convenience and necessity does not require the sale of this gas at proposed rates.

In my opinion, the consequences of abandoning our position will be more serious than their effect on this particular sale. Whether by design or accident, the issues in this proceeding now transcend the close limits of the original hearing. At stake is the question whether the Commission should hold a position which it has determined is in the long run public interest, or whether it should abandon it when confronted with allegations that short run injury to one segment of the industry and consumers [fol. 501] might result. Where the issue is reduced to this simple statement, the answer is clear.

Majority quite properly are concerned that persisting in either our April 22 or May 20 Order will result in

cancellation of the CATCO-Tennessee contracts. I agree it probably would. And quite understandably the majority refuses to permit a few distributing companies and one Public Service Commission to dictate the interests of all other consumers on Tennessee's lines. Unfortunately, however, there is more to this issue.

As concerned as I am for Tennessee's customers, I am more concerned for the whole body of consumers on *all* transmission pipe lines for whose protection we are responsible. And as deserving of preservation as I believe those particular Orders to be, I believe the principle that Federal regulatory Orders should not be changed by threats of abandoning public responsibility is even more important.

On balance, and in view of the expansion of the issues beyond those originally contemplated by this docket, I believe it more important to the public interest to preserve the Commission's authority to make lawful and necessary orders than it is to preserve these contracts as written. The right to maintain valid orders against allegations of urgency, the importance to the consumer of the *Signal Oil* doctrine, and the right of *all* consumers for protection against unreasonable initial rates outweigh the potential damage to the consumers of Tennessee Gas Transmission which might flow from maintaining the position I urge here.

While dissenting may appear to serve no useful purpose, the damage to consumer and to the public interest, to the regulatory process, and to the future of the interstate natural gas business as it is given me to discern it, would be such under the majority decision that, inevitable as that decision may appear to be, I am left no choice but to protest it by filing a dissenting vote.

I dissent from the action of the majority in this cause.

WILLIAM R. CONNOLE,
Commissioner

[fol. 502]

EXHIBIT B TO PETITION

Decision.

UNITED STATES OF AMERICA

FEDERAL POWER COMMISSION

IN THE MATTERS OF CONTINENTAL OIL COMPANY THE ATLANTIC REFINING COMPANY CITIES SERVICE PRODUCTION COMPANY TIDEWATER OIL COMPANY	Docket No. G-11024 Docket No. G-11034 Docket No. G-11046 Docket No. G-11049

Upon Applications for Certificates of Public Convenience and Necessity, Filed Pursuant to Section 7(c) of the Natural Gas Act.

Appearances

For Continental Oil Company:
ROLAND B. VOIGHT, Esq., Houston, Texas.

For The Atlantic Refining Company:
BERNARD A. FOSTER, JR., Esq., Washington, D. C.
EDWARD J. KREMER, JR., Esq., Dallas, Texas.

For Tidewater Oil Company:
GENE M. WOODFIN, Esq., Houston, Texas.
ROBERT O. KOCH, Esq., Houston, Texas.

For the Tennessee Gas Transmission Company:
HARRY B. LITTMAN, Esq., Washington, D. C.
JACK WERNER, Esq., Washington, D. C.

For The Brooklyn Union Gas Company:
EDWIN F. RUSSELL, Esq., Brooklyn, N. Y.
ROBERT B. LISLE, Esq., Brooklyn, N. Y.

[fol. 503] For Cities Service Production Company:
BERNARD A. FOSTER, JR., Esq., Washington, D. C.
CECIL C. CAMMACK, Bartlesville, Oklahoma.

For Long Island Lighting Company:
EDWIN F. RUSSELL, Esq., Brooklyn, N. Y.
ROBERT B. LISLE, Esq., Brooklyn, N. Y.
DAVID K. KADANE, Esq., Mineola, N. Y.
EDWARD M. BARRETT, Esq., Mineola, N. Y.

For Lake Shore Pipe Line Company:
THOMAS F. RYAN, JR., Esq., Washington, D. C.

For Public Service Electric and Gas Company:
EDWARD S. KIRBY, Esq., Newark, N. J.
J. HARRY MULHERN, Esq., Newark, N. J.
WILLIAM R. DUFF, Esq., Washington, D. C.

For New York Public Service Commission:
MORTON L. SIMONS, Esq., New York, N. Y.
KENT H. BROWN, Esq., Albany, N. Y.

For Staff of the Federal Power Commission:
JOHN PAUL GENEAU, Esq., Washington, D. C.
ROBERT L. RUSSELL, Esq., Washington, D. C.

SIMPSON, Presiding Examiner: The proceeding arises under the certificate provisions of Section 7(c) of the Natural Gas Act (Act).

By separate applications filed in each of the dockets appearing in the caption, above, September 5, 1956, September 7, 1956, September 10, 1956 (latter two dockets), respectively; Continental Oil Company (Continental), The Atlantic Refining Company (Atlantic), Cities Service Production Company (Cities), and Tidewater Oil Company (Tidewater) applied for statutory authorization to sell natural gas from leases in the West Cameron, East Cameron and Vermilion areas, in the Gulf of Mexico, offshore the coast of Cameron and Vermilion parishes, Louisiana, to Tennessee Gas Transmission Company (Tennessee) [fol. 504] pursuant to separate contracts between each one of them and Tennessee, dated, respectively, August 17, 1956 (Continental-Tennessee contract), August 10, 1956

(Atlantic-Tennessee contract), August 14, 1956 (Cities-Tennessee contract, and Tidewater-Tennessee contract).

On October 3, 1956, the Secretary duly issued a "Notice of Applications" pertaining to the above filings, which directed that these related matters should be heard on a consolidated record, and on February 8, 1957, issued a "Notice of Hearing". Pursuant to these notices and upon appropriate publication and service thereof the hearing thus provided was duly held, commencing February 28, 1957, and concluding the following day, concerning the matters involved and the issues presented by these applications.

By order issued February 27, 1957, the Commission permitted intervention by the petitioners Tennessee Gas Transmission Company (Tennessee), The Brooklyn Union Gas Company (Brooklyn), Long Island Lighting Company (Long Island), Public Service Electric and Gas Company (Public Service), Lake Shore Pipe Line Company (Lake Shore), and permitted late filing by the New York Public Service Commission (New York) of the latter's notice of intervention received by the Commission October 22, 1956. All of the interveners actively participated in the proceedings, some throughout the hearing, until the conclusion thereof on the second day. Initial and reply briefs have been filed by or on behalf of all participants, including Applicants' interveners, and the Commission's staff.[1]

By order issued March 8, 1957, the Commission denied a motion made by Applicants at the conclusion of the hearing on March 1, 1957, to omit the intermediate decision procedure.

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[1] The applicants Atlantic and Cities filed a joint initial memorandum brief, as did the applicants Continental and Tidewater. Counsel for the Public Service Commission complains in his initial brief of "the inadequate time set by the Examiner for the filing of initial briefs." As this counsel was one of those who did not attend the concluding portion of the hearing on the second day, and no one spoke for him, the Presiding Examiner was unadvised as to any further situations concerning him which might have been entitled to consideration in connection with the determination of the time for filing briefs.

[fol. 505] THE ISSUES.

The basic issues are those presented in certificate proceedings had under Section 7(c) and (e) of the Act, to-wit:

(a) Is the Applicant, each of them, duly qualified and able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Act and the requirements, rules, and regulations of the Commission thereunder;

(b) Is, or will, the proposed service, sale, or operation required, or be required, by the present or future public convenience and necessity.

INTENTIONS.

APPLICANTS.

The applicants contend to the effect: that the record shows that based upon sizeable reserves as well as potentials, Applicants are able to perform the service proposed; that Applicants' willingness to perform is established by the consummation of the contracts of sale with Tennessee, by the prosecution of the several applications, and by the evidence of record; and that the present and future public convenience and necessity require issuance of the certificates in order that the subject reserves may be used to supply the expansion and demands of Tennessee's markets; that the initial price to be charged under the contracts will not exert a disruptive effect on other contracts, will not trigger other Tennessee contracts, and will not precipitate the filing by Tennessee for an increase in its rates.[2] Applicants aver that if they are unable to secure

[2] In contending that the determination of a just and reasonable rate is left under the Act to Section 4 and Section 5 proceedings and is not to be determined thereunder in a Section 7 proceeding, the Applicants Continental and Tidewater point out that there is now pending under the Commission order of January 27, 1956 a Section 5 (a) proceeding against Atlantic and Tidewater (G-9283 and G-9284) and the Applicant Continental, *et al.* (G-9279), with respect both to rates in effect and those proposed to be made, and further contend that the same are entitled to have their rates tested in such pending proceedings with all of the procedural

[fol. 506] certificates within the time as shown by the record to be required, they will have no alternative but to market the gas elsewhere or face the loss of their properties; and that conditioning Applicants' certificates upon the final granting of a certificate to Tennessee to construct facilities to transport the gas to shore, as proposed by Tennessee in Docket No. G-11,107 can serve no useful purpose and would in effect be the same as refusing Applicants their certificates.

As to a condition proposed by Staff counsel dealing with the transportation of liquefiable hydrocarbons by Tennessee for Applicants from offshore platforms to points on shore, the latter (Continental and Tidewater) contend that this is a matter that can properly be considered in future rate cases involving the price to be charged by Applicants under the contracts and that if it should appear at any time that the transportation arrangement imposes any burden upon Tennessee's consumers proper adjustments may then be made after a complete review of all rate factors.

INTERVENERS

Tennessee Gas Transmission Company. This intervener supports the applications for certificates and contends, in substance: that the gas reserves involved are well located in relation to Tennessee's system, affords the latter an entry into offshore areas of large gas reserves, places Tennessee in a favorable position to acquire large reserves to be developed in the future, and enables the latter to continue to meet the expanding demands of its markets; that the volumes of gas specified in the contracts can be delivered to Tennessee; that the gas to be delivered will be of high quality; that the construction by Tennessee of the facilities required to bring the gas from Applicants offshore platforms to the Tennessee's main line at Kinder, Louisiana, is feasible; that under valid assumptions the effect of the instant contracts on Tennessee's 1958 weighted

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safeguards which are attendant thereon, and that it would be contrary to the public interest to turn these certificate proceedings into rate proceedings.

[fol. 507] average cost of gas is an increase of but 0.97 cents per Mcf; that under the authority of alleged holdings of the Commission in previous cases the justness and reasonableness of prices to be paid under gas purchase contracts should not be inquired into in producer certificate cases; and that the proposed sales of the Applicants, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the public convenience and necessity, and certificates therefor should here issue. Tennessee avers that the price provisions in the contracts involved here do not trigger any of Tennessee's existing favored nation or renegotiation clauses contained in its other gas purchase contracts, nor, as far as the evidence discloses, any such clauses contained in the contracts of any other company.

Other Interveners. In general the intervention of the intervener customers of Tennessee rests basically upon an asserted interest in the effect the prices to be paid by Tennessee for the gas proposed to be purchased herein, and the terms and conditions of the contract pertaining thereto, will have on the price charged by Tennessee for gas sold by it to interveners.[3] Considered as a group the contentions of these interveners are to the effect: that Applicants have failed to justify the proposed price of gas to Tennessee; that once the Commission certificates these Applicants and Tennessee begins taking gas from the reserves interveners will be powerless to attack the price for such gas in any future rate proceeding; that the evidence presented does not show what the effect of the purchase of gas under these four contracts will be on Tennessee's over-all cost of gas delivered into its main system ashore or on Tennessee's rates to customers; that Applicants offered no evidence to justify the proposed initial price, allegedly the highest yet known in the Southwestern United States; that the Applicants have thus failed to meet the statutory requirements [fol. 508] for the issuance of certificates under Section

[3]Brooklyn and Long Island state that neither is seeking additional quantities of firm gas from Tennessee in the latter's pending certificate proceeding (G-11,107) relating to market expansion and the use of the additional supplies of natural gas here involved.

7(c) of the Act;[4] and that, accordingly, the Commission cannot properly reach a determination that the proposed service is in the public interest and required by the public convenience and necessity. Interveners aver that the shelf-land covered by the leases is within the offshore area in dispute between the Federal Government and the State of Louisiana and depending in part upon the resolution of that controversy the leases might be bound to be within an established pricing area and would thus eventually trigger the favored nations clauses of some 20 of Tennessee's existing contracts in the Southwestern Louisiana pricing area. Interveners also contend as the evidence indicates that an extension of Tennessee's existing pipe line is required (G-11,107), to take deliveries of gas under Applicant's contracts herein the equities involved require that any certificates issued should be conditioned upon the granting of a certificate to Tennessee for the said extension (M. Br., p. 28, Brooklyn Union and Long Island; M. Br., p. 11, Public Service); and that the present or future public convenience and necessity also require the Commission to attach a rate condition to such certificates of such nature as to prevent the establishment of a new peak price of gas in the area and thus discourage the "leap-frogging" (price-wise) which will inevitably follow these transactions unless the Commission takes such action. (M. Br., Public Service, p. 20), one requesting that the condition provide a rate not to exceed the rates which Tennessee is presently paying for natural gas produced by Applicants in the so-called West Delta, Louisiana, offshore area (M. Br., p. 14, Lake Shore).

The brief of the New York Public Service Commission as to the merits follows substantially the contentions of the immediately preceding interveners. This brief also contains [fol. 509] additional and otherwise surprising matter in the

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[4] The intervener Lake Shore states that there is no question, insofar as it is concerned, as to the ability and willingness of the Applicants to perform (M. Br., p. 3). Brooklyn and Long Island emphasize the rate aspects. The intervener Public Service directly raises the issue of "able and willing properly to do the acts and to perform the service proposed" (M. Br., pp. 9-10).

nature of allegations essentially misstating the manner in which the hearing was conducted, with respect to which the appropriate reply of counsel for the Applicants Continental and Tidewater (R. Br., p. 20) and Atlantic and Cities (R. Br., pp. 2-3) and the intervener Tennessee (R. Br., p. 2, n. 2) constitute sufficient answers and a basis for giving the further consideration thereto in this decision.

STAFF COUNSEL.

Staff counsel submits that Applicants are able and willing properly to do the acts and to perform the service proposed and to conform to the provisions of the Act and the requirements, rules and regulations of the Commission thereunder; and that the proposed sale of natural gas by Applicants to Tennessee is or will be required by the present or future public convenience and necessity; and recommends, substantially, that Applicants be issued their certificates of public convenience and necessity.

Staff counsel contends that no question or issue of rates is involved in this proceeding, on the ground that at such time as Tennessee proposes an increase in rates or it can be shown that Applicants' rates have a consequential and material effect upon the rates of Tennessee, the question of the justness and reasonableness of Applicants' rates may be investigated and passed upon in a proper proceeding. Counsel further contends, in effect, that the question of any need for renumeration to Tennessee for the transportation by it of liquid hydrocarbons for Applicants from offshore to shore locations, should be held in abeyance until such time as Tennessee proposes to actually transport, but proposes that an order issuing the certificates contain an appropriate reservation in the premises.

DISCUSSION.

JURISDICTION.

Each Applicant concedes, in substance, that on information and belief, all or a portion of the gas to be sold by the [fol. 510] respective Applicant will be transported by Tennessee in interstate commerce for resale, for ultimate public

consumption, and such is effectually disclosed in the evidence.

Contentions by the Applicants that they are not subject to the Commission's jurisdiction are answered in the Commission's Opinion No. 284, in *Matters of Deep South Oil Company of Texas, et al.* (G-2952, etc.) and Opinion No. 285 in *Matters of Dixie Pipe Line Company, et al.* (G-2401, etc.) which require the finding and conclusion in this proceeding that the sales of natural gas proposed by Applicants will be sales in interstate commerce for resale within the jurisdiction of the Commission, and that Applicant will thereby be a "natural-gas company" within the meaning of the Act.

THE MERITS.

Continental is a major oil and gas company with substantial assets. The other three companies also are substantial operators in oil and gas. It satisfactorily appears that none of these companies own any interest in any one of the other and there is no affiliation between them.

In the event satisfactory certificates are issued within the time provided in the contracts, which are the subject of this proceeding, Continential will be ready, willing and able to perform its obligations under its contract with Tennessee and the other three applicants are likewise ready, willing and able to carry out their agreements with Tennessee.

Though these matters are testified to solely by Continental's land superintendent in charge of the latter's marine or offshore region, on the basis of advice received from others his responsibilities and duties with respect to the business of supervision and development of leases, with or without joint interests present, which are inferred to relate to such matters, and his position in the company with respect to exploration, are deemed to remove his testimony from the realm of pure or uncorroborative hearsay to that of reasonably reliable and probative evidence as to matters on which Continental relies in conducting its day to day [fol. 511] business. Further, Applicants' counsel offered to produce further witnesses as desired by cross-examining counsel, but was not requested or advised to do so.

Continental, Atlantic, Tidewater and Cities[5] each own an undivided quarter interest in the leases here subject to the contract with Tennessee. These leases are located some 15-25 miles offshore in blocks or portions of blocks and total some 95,000 acres. They embrace what appear to be three or more fields located on the Continental shelf in the Gulf of Mexico, in the so-called West Cameron, East Cameron, and Vermilion areas.

The leases were acquired from the State of Louisiana by purchase at sales conducted by the State Mineral Board at Baton Rouge, Louisiana, in 1947 to 1948, and have been continued under Section 6 of the Outer-Continental Shelflands Act. It satisfactorily appears, that in order to comply with the obligation of the leases and the Shelflands Act, production from the leases should commence by 1958.

Three of the Applicants have designated Continental as operator of the leases and Continental has created an operating organization within itself known as its CATC Marine Region which conducts the offshore activities for which it is responsible. However, each Applicant has retained to itself responsibility for marketing its own production from its lease interests.

THE CONTRACTS.

The basic terms and conditions of the contracts between each of the producer companies and Tennessee are identical. Under the terms of these contracts deliveries to Tennessee are scheduled to commence November 1, 1957. From November 1, 1957 to November 1, 1958, Tennessee will be required to take 175,000 Mcf (or four-fifths of the maximum efficient rate of flow, whichever is less). From and after November 1, 1958, Tennessee will be required to take, or pay for, 1,000 Mcf for every 8,000,000 Mcf of recoverable gas originally in place in the dedicated reserves. [fol. 512] Delivery to Tennessee will be effected by or on behalf of the Applicants at the latter's offshore drilling platforms.

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[5] Known as the CATC Group, from the initials of the names of the four companies.

The dedication under the contracts is up to a maximum of 2,000,000,000 Mcf with the right to Applicants to dedicate to the contract on or before August 1, 1957, or August 1, 1958, additional gas reserves in the areas[6] up to the amount of 1,000,000,000 Mcf[7], and, subject to several conditions, including an extension of the term of the contract, certain additional reserves may be dedicated each 12 months during the period August 1, 1958 to August 1, 1967. However, the initial dedication is not only limited to 2,000,000,000 Mcf, but is limited also by lease lines, reservoirs specified in exhibits attached to each contract, and by depth (Vermilion area only).

The gas sold to Tennessee is to be metered on the Applicants' offshore platforms and delivered at the valve on the discharge side of the meter.

FACILITIES.

Other than wells and platforms, facilities owned and operated by or on behalf of Applicants for the purpose of effecting deliveries to Tennessee will include separators and meters on the platforms. Tennessee is to provide the offshore pipeline and will be required to connect up each of Applicants' producing platforms. Applicants will not own or operate a gathering system and will own no facilities, so far as deliveries to Tennessee are concerned, beyond the platforms.[8]

Continental as operator of the leases, will be able to commence deliveries to Tennessee on November 1, 1957, as required by the contract, if Tennessee is granted the certificate applied for by the latter in Docket No. G-11107 in time to construct the facilities necessary to enable it (Tennessee) to accept such deliveries.

[fol. 513] To receive gas from nine existing platforms and deliver it to Tennessee's main line system at Kinder,

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[6] West Cameron, East Cameron, and Vermilion areas.

[7] No additional dedications have been yet effected.

[8] Because of directional drilling as a method of developing offshore reserves, Applicants may have as many as five wells drilled from one platform.

Louisiana, will require the construction by Tennessee of 46.9 miles of 26-inch line from Kinder to the shore's edge and 60.8 miles of 26-inch to 12-inch lines thence to the platforms offshore, at an estimated total cost of $16,315,412.[9]

Tennessee is seeking a certificate of public convenience and necessity for these facilities in G-11107 in connection with a proposed general expansion of its system.

Tennessee represents through the testimony of its witnesses that it is willing and able to construct these lateral facilities necessary to receive the gas here involved. It has had experience in the construction of similar offshore facilities in another location off the same coast, and there appear to be no particular technical problems to be confronted in the construction of such facilities which cannot be overcome by normal engineering practices.

However, due to late summer and and fall weather conditions usually prevailing in the Gulf, Tennessee must commence construction of the offshore gathering system not later than early spring of this year.

Failure to complete the system in time would place in jeopardy Tennessee's rights under its contracts with Applicants, and so far as the latter relied upon timely completion which failed would place in jeopardy the titles to their leases.

TENNESSEE'S REQUIREMENTS FOR ADDITIONAL GAS.

Tennessee's vice-president in charge of gas purchases, who represented Tennessee in the lengthy negotiations of the instant contracts, testified that Tennessee's purpose was to obtain gas reserves to supply the expansion of Tennessee's market as shown in Tennessee's pending application in Docket G-11107. None of the data which it is assumed was filed in support of such application is in evidence in this proceeding.

[9] In the event of dedication of additional gas reserves the contracts would require Tennessee to build as much as one mile of offshore lateral gathering line for each 10,000,000 Mcf of gas reserves added up to 100,000,000 Mcf for each of 9 years. This presents no problem here.

[fol. 514] GAS AVAILABLE.

Twenty-two wells have been drilled on the leases by the four companies,[10] nine of which are dual completions. Eleven additional wells are programmed for 1957 and there will be further development by drilling in subsequent years. There are nine platforms in place on which there is either a well drilling or one or more wells completed. Two more platforms at least are to be added after production.

Tennessee's gas reserve witness testified that he estimated that the recoverable gas reserves in the three fields under the 95,000 acres dedicated as above set forth[11] totalled some 1,673,929,000 Mcf (14.73 psia).[12] The estimates are derived by using the volumetric method as applied to information obtained from the operator, consisting of descriptions and maps of the leases, and well surveys, with electrical logs, core descriptions, and well test information.

In nearly all instances the witness made his own structural maps. He made his own determinations of average sand thickness, productive limits, porosity, and connote water, having available for these purposes his own experience and interpretative information contained in Tennessee's own files pertaining to similar fields along the Louisiana Gulf Coast area. He derived reservoir temperatures and pressures from well information and gradient curves, allowed for deviation from compressibility, and assigned recovery factors. His reserve estimates, though made independently in the manner stated, agree substantially with those of the operator. None of the gas is associated with oil and it is relatively low in condensate.

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[10] Four dry holes presumably are not included in this number.

[11] Limited by lease lines, reservoirs, and depth, *supra*. Of the 95,000 acres only 11,500 are in fact proven.

[12] Subject to some reduction if Applicants remove the condensate. The contract limits the reduction in volume for such purposes to 10%. The estimated reduction is much less than that thus allowed. Of the total proven reserve of 1,673,929,000 Mcf some 430,000,000 Mcf is untested by conventional production methods and rests on the correlation of electric well log and core analysis data.

Basing his testimony on well information and the number of wells drilled and to be drilled, Tennessee's reserve [fol. 515] witness testified in conclusion that in his opinion the volumes of gas specified by terms of the contract can be delivered to Tennessee, i.e. 175,000 Mcf per day (15.02 psia) the first year and thereafter in accordance with the reserve ratio.[13]

Tennessee's vice-president in charge of gas purchases testified that these reserves which would amount to a substantial portion of Tennessee's total reserves, not only constituted the only large package of gas for sale in the Gulf Coast area at the time of negotiations, but were well located with respect to Tennessee's system, and had a significant potential for additional reserves as the acreage is developed, in all advantages of so substantial a character as to have led most of the other interstate gas transmission companies to enter highly competitive bids for them. None of the interveners made any substantial contention that the acquisition of these reserves by Tennessee was improvident or useless or was other than favorable to the interest of the public served by Tennessee's system. In fact the only real objection by interveners to the granting of a certificate to these Applicants is to the price at which these reserves were acquired by Tennessee.

PRICES.

As previously stated herein the contracts set an initial price of 21.4¢ per Mcf (15.025 psia) applicable substantially to the period from the date of initial delivery (November 1, 1957) to November 1, 1962, and provide thereafter for step escalations, briefly at the rate of 2¢ per Mcf every four years until the expiration of the contract. The con-

[13] At the contract take or pay ratio effective after the first year (1,000 Mcf per day for each 8,000,000 Mcf of original recoverable reserves) the average minimum rate of take would become 1/8,000 of 1,673,929,000 Mcf or 209,000 Mcf (14.73 psia) per day. The contracts also provide a formula for the maximum demand which Tennessee can make upon Applicants, providing, on certain assumptions, a swing between the foregoing minimum of 209,000 Mcf and a maximum of 250,000 Mcf per day (14.73 psia).

tracts also provide for reimbursement of State production taxes or a Federal equivalent dependent upon the settlement of title to the offshore shelf lands. The production [fol. 516] or severance tax imposed by the existing laws of the State of Louisiana (Act No. 11, Laws 1948; Act No. 45, Laws 1954, amending) is 1¢ per Mcf.

Including the gas which Tennessee proposes to purchase under these contracts, some 240,000 Mcf per day (14.73 psia), it is estimated that the weighted average cost of all gas to Tennessee in 1958 will be some 13.70¢ per Mcf, as compared with 12.73¢ if the gas here proposed to be purchased is excluded.[14]

Interveners have elicited from their examination of witnesses that, among other things, in the West Delta offshore area, some 200 miles distant, Applicants are selling gas to Tennessee at 17¢ per Mcf; that Tennessee pays only slightly in excess of 10¢ per Mcf, including the gathering tax, in its Southwestern Louisiana pricing area; that Tennessee is not paying as high a price as 21.4¢ to any other producer under any contract; that the step escalation provided in the instant contracts were inserted in part at least, in lieu of favored nations and price redetermination clauses, and are the steepest of any such provisions in Tennessee's present gas purchase contracts. However, initial or other prices paid by other interstate pipelines in long term contracts in onshore areas equal or exceed 20¢ per Mcf for smaller reserves and smaller future potentials than those provided by Applicants' contracts here with Tennessee, and steep step escalations are not unknown in interstate pipeline contracts. All such matters, nevertheless, assume a basis of comparison not provided by the evidence of record in this proceeding. Varying operating conditions characterizing different transactions could be most significant. Tennessee did not initiate the foregoing price comparisons and no real effort was made by interveners to adequately support them. In any event, to permit such an exploration in this proceeding would simply invite the

[14] Neither cost figure reflects possible increases which may be filed for under the provisions of Tennessee's other contracts, whether or not these contracts with Applicants become effective.

opening up of the whole subject of the validity of all rates entering into the comparison, viz., not only the prices here immediately involved, but the rates charged in the West [fol. 517] Delta area,[15] and the others mentioned. This is more than the Act requires or intends in a Section 7 certificate proceeding, such as here, where public convenience and necessity is inherently the basic issue, certainly in the absence of any showing of imprudence or of abuse of discretion by management.

Therefore, assuming management has discretion, within its proper range, to make a selection as to sources of gas supply, and, in the absence of any substantial indication in the evidence or even serious claim by interveners that the initial cost of this gas by itself would necessarily lead to an increase in Tennessee's rates to jurisdictional customers, no grounds appear for permitting this case under Section 7 of the Act to assume the character of a rate proceeding under Section 5(a) thereof.

Any attempt to add the Mcf cost of lateral line, pipe line, or gathering facilities directly to the price of gas at the offshore platforms for the purpose of arriving at some total Mcf cost of gas to Tennessee's system would simply involve the unwarranted assumption that any other addition of reserves, in lieu of those here involved, would not likewise entail the construction of additional facilities of like nature and of substantial size and proportionate cost. Moreover, the evidence here clearly shows that single or package reserves of such size as Applicants' were not available to Tennessee from other sources in the Gulf Coast area.

Barring questions which cannot be resolved in this proceeding concerning Louisiana's title to the offshore shelf-lands and the significance of a determination of title in Louisiana as to the possible seaward extension of parish lines with respect to the territorial scope of price provisions in Tennessee's onshore contracts, the opinion of Tennessee's operating officials is that the West Cameron, East Cameron and Vermilion areas constitute new pricing

[15] The West Delta reserves are smaller than those the Applicants offer here.

areas and that the price provisions of the contracts here involved will not trigger existing favored nations or rene- [fol. 518] gotiation clauses in Tennessee's other gas purchase contracts in its Southwest Louisiana pricing area nor, in fact, so affect any of Tennessee's other gas purchase contracts, and no participant made a showing to the contrary.

THE "SUBSTITUTION" CLAUSE.

Subject to certain conditions not here pertinent, Section 3(j) of the contracts provides a substitution or permissive delivery clause whereby, in substance, each Applicant may deliver up to its 25% share of 50,000 Mcf per day in addition to the respective contract quantities if Applicants are prevented from delivering to Tennessee from their gas reserves dedicated to Tennessee in fields in the West Delta area, such additional deliveries to be made under the terms and prices of these contracts but to be allocable against Applicants' commitments to Tennessee under the West Delta contracts.

This clause was inserted at the suggestion of Tennessee, due to the fact that the gas reserves dedicated to Tennessee under the West Delta contract are so rich in distillate or condensate as to entail possible retrograde condensation in the reservoir during production. Under such circumstances a possibility exists that either State authorities might require or producers might desire to cycle the gas and recover the liquids, in which circumstances deliveries to Tennessee from that area could or would be curtailed at the time. Operations under Section 3(j), above, would assume make-up deliveries from West Delta at a later time after cycling was completed, and the overall arrangement would operate to enable Tennessee to receive its rightful quantities of gas under any circumstance, and to eventually receive under each contract all contract quantities, probably at the same ultimate resultant cost of purchase. Inequities possibly latent in such an operation cannot now be determined and are not to be considered as if presented for such determination in this proceeding. The clause is not objectionable *per se*.

[fol. 519] APPLICANTS' EXTRACTION AND TRANSPORTATION RIGHTS.

Section 6(b) of the contracts provide, in brief, that, in addition to mechanical or low temperature separation, Applicants may process the gas for the recovery of liquifiable hydrocarbons including the methane-ethane stream at a shore based extraction plant, provided that such process, together with fuel use, will not remove more than 10% of the volume of gas daily produced and delivered to Tennessee. Moreover, the gas finally delivered to Tennessee must have a total heating value of not less than 1,000 Btu per cubic feet.

Several considerations are pertinent to this matter:

In making deliveries to Tennessee at the off-shore platform Applicants must provide separators to eliminate water in order to meter and deliver dry gas. Separation also removes at least some of the condensate or distillate, which under the contracts may be recombined by Applicants with the gas stream after the gas has been metered for off-shore delivery for transportation by Tennessee to shore and delivery to Applicants without charge. Tennessee's witness testified to the effect that if the Applicants did not remove at least some of the distillate before it was pipelined, Tennessee would have to do so, and further, Tennessee will pay only for the residue gas as remetered at Applicants' onshore processing plant.

The gas is fairly normal Miocene production and is very dry, having a low distillate or condensate content varying from 6 to 11 barrels per 1,000 Mcf, and consequently small shrinkage in volume is expected, i.e., something less than 5% of ~~the stream.~~ Further the flexibility capacity-wise reflected in the design of the lateral line for normal gas operations and the infrequency with which Tennessee would be depleting the reserves here involved, at the maximum rate, make it appear that the real effect cost-wise to Tennessee of the transportation for Applicants, as well as any appropriate disposition with respect thereto, cannot now be determined. This burden will, in any event, have no im-
[fol. 520] mediate effect upon Tennessee's rates to jurisdic-

tional customers and can be further considered at such time as operations commence or rate effects become apparent.

The Relation of Tennessee's Application in Docket No. G-11,107.

The facts of this proceeding indicate that these reserves are important to Tennessee's expansion and it is known that the demand for natural gas is almost everywhere in excess of that available from pipeline systems. However, any finding to the effect the public convenience and necessity requires or will require the issuance of certificates to Applicants in this proceeding would be confronted with the fact that a contrary finding made with respect to Tennessee's application for a certificate which is pending in Docket No. G-11,107 would be in fact in conflict as Tennessee proposes to use the reserves which are the subject of this proceeding in connection with its expansion program which is the subject of its application in G-11,107.

The findings and order will therefore be qualified and conditioned upon a certificate being issued to Tennessee in G-11,107 or otherwise, covering facilities necessary to the taking of gas from Applicants into Tennessee's main line system.

Further Findings and Conclusions.

(1) Applicants, independent producers of natural gas, upon commencement of the sales authorized herein, will be engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption; subject to the jurisdiction of the Commission, and each will, therefore, be a "natural-gas company" within the meaning of the Natural Gas Act.

(2) The sales of natural gas hereinbefore described, as more fully described in the applications, will be made in interstate commerce, subject to the jurisdiction of the Commission, and such sales by Applicants, together with [fol. 521] the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(3) Applicants are able and willing properly to do the acts and to perform the services proposed and to conform to the provisions of the Natural Gas Act, and the requirements, rules and regulations of the Commission thereunder.

(4) Assuming the issuance to Tennessee by the Commission of an appropriate certificate for the construction of facilities enabling it to take delivery of Applicants gas into its (Tennessee's) main line system the sales of natural gas by Applicants, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the public convenience and necessity, and certificates should be issued as hereinafter ordered and conditioned.

ORDER.

Upon consideration of the record herein, the contentions and briefs of counsel, and for the reasons and upon the findings and conclusions set forth in the foregoing portions of this decision, of which this order is a part,

IT IS BY THESE PRESENTS ORDERED, subject to review by the Commission on appeal, or on its own motion, as provided by its Rules of Practice and Procedure, that:

(A) That certificates of public convenience and necessity be and are hereby issued, upon the terms and conditions of this order, authorizing the sales by Applicants of natural gas in interstate commerce for resale, together with the construction and operation of any facilities, subject to the jurisdiction of the Commission, used for the sales of natural gas in interstate commerce, as hereinbefore described and as more fully described in the applications and exhibits in this proceeding.

[fol. 522] (B) That certificates issued herein shall be deemed accepted and of full force and effect, unless refused in writing and under oath by Applicants within 30 days from issuance of this order.

(C) That certificates are not transferable and shall be effective only so long as Applicants continue the acts

or operations hereby authorized in accordance with the provisions of the Natural Gas Act, and the applicable rules, regulations and orders of the Commission.

(D) That the grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or of Section 154 of the Commission's Rules and Regulations thereunder requiring the filing of rate schedules for the services herein authorized, and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the Applicants. Further, the action in this proceeding shall not foreclose nor prejudice any future proceedings or objection relating to the operation of any price or related provision in the gas purchase contracts herein involved.

(E) The question of such transportation and proper charge therefor not being presently before the Commission, the issuance of this order shall not be construed as recognition of any claim by Applicants of an obligation on the part of Tennessee to transport liquids for the account of Applicants.

(F) This certificate is conditioned upon the granting by the Commission of a certificate to Tennessee authorizing the construction and operation of facilities enabling Tennessee to take deliveries of gas from Applicants herein into Tennessee's main line system.

Ewing G. Simpson
Presiding Examiner

Filed: March 29, 1957

Issued: March 29, 1957

[fol. 523]

EXHIBIT C TO PETITION

Findings and Order Issuing Temporary Certificates of Public Convenience and Necessity.

(Issued April 22, 1957)

UNITED STATES OF AMERICA

FEDERAL POWER COMMISSION

Before Commissioners: JEROME K. KUYKENDALL, Chairman; SEABORN L. DIGBY, WILLIAM R. CONNOLE and ARTHUR KLINE.

IN THE MATTER of	
CONTINENTAL OIL COMPANY	Docket No. G-11024
THE ATLANTIC REFINING COMPANY	Docket No. G-11034
CITIES SERVICE PRODUCTION COMPANY	Docket No. G-11046
TIDEWATER OIL COMPANY	Docket No. G-11049
TENNESSEE GAS TRANSMISSION COMPANY	Docket No. G-11107

Continental Oil Company on September 5, 1956, The Atlantic Refining Company on September 7, 1956, and Cities Service Production Company and Tidewater Oil Company on September 10, 1956 (together termed CATCO) have filed applications pursuant to Section 7 of the Natural Gas Act for a certificate of public convenience and necessity authorizing the sale of gas from their leases off the coast of Louisiana to Tennessee Gas Transmission Company. On its part, Tennessee Gas has filed an application for a certificate of public convenience and necessity on September 19, 1956, as amended March 1, 1957, for authority, among other things, to construct and operate facilities for the transportation of gas from the offshore platforms owned by CATCO to a point on its main pipeline system at Kinder, [fol. 524] Louisiana. The presiding examiner's decision issued March 29, 1957, would grant certificates to CATCO,

without imposing a rate condition but with a condition that a certificate be issued to Tennessee Gas for the necessary facilities.

Exceptions were filed by interveners New York Public Service Commission, Long Island Lighting Company, Lake Shore Pipe Line Company, and Public Service Electric and Gas Company objecting to the rate proposed and requesting a rate condition, and by CATCO, objecting to the requirement that a certificate be granted to Tennessee Gas unless a temporary certificate would satisfy this condition.

The record shows that the four producer companies each owns a quarter interest in gas leases located some 12 to 25 miles off the coast of Louisiana in the Gulf of Mexico, in the East Cameron, West Cameron, and Vermilion areas, totalling some 95,000 acres and containing reserves of some 1,673,929,000 Mcf including 430,000,000 Mcf untested by conventional methods. In this offshore field the four companies own platforms, wells, separators, and meters, but no pipelines. To connect with the offshore wells, Tennessee Gas proposes to build some 46 miles of 26-inch line from its main line at Kinder, Louisiana, to the shore, and some 61 miles of 26-inch, 20-inch, 16-inch, and 12-inch line thence to the platforms at an estimated cost of $16,315,412.

The sales of gas will be made to Tennessee Gas at the offshore platforms under the terms of separate contracts executed in August of 1956, all of whose basic provisions are identical, providing that Tennessee Gas must accept 175,000 Mcf or four-fifths of the total quantity which the wells are capable of producing, whichever is the lesser, until November 1, 1958. After that it will be required to take and pay for 1,000 Mcf for every 8,000,000 Mcf of recoverable gas originally in place in the dedicated reserves. The testimony showed that the reserves were adequate to meet contract deliveries.

The initial price which would be paid by Tennessee Gas under each of the contracts, is 22.4 cents per Mcf (including [fol. 525] one cent per Mcf for the Louisiana gathering tax) until November 1, 1962. Thereafter, the price would escalate by two cents per Mcf every four years until the contract in question expires. The record shows that the 22.4-cent

price is higher than Tennessee Gas is paying under any other contract. It is this price, with the provision for escalation, to which the interveners have made vigorous objections in exceptions to the presiding examiner's decision, which would grant a certificate without a rate condition attached to it. They contend that if the rate were allowed to stand it would establish a higher-price plateau in a new area to the detriment of consumers.

The record contains insufficient evidence or testimony, however, on which to base a finding that the public convenience and necessity requires the sale of these volumes of gas at the particular rate level here proposed. The importance of this issue in certificating this sale cannot easily be overemphasized. This is the largest reserve ever committed to one sale. This is the first sale from the newly developed offshore fields from which large proportions of future gas supplies will be taken. This is the highest price level at which the sale of gas to Tennessee Gas has been proposed.

Those factors make it abundantly evident that, in the public interest, this crucial sale should not be permanently certificated unless the rate level has been shown to be in the public interest. See *Cities Service Gas Co., Signal Oil and Gas Co.*, 14 F. P. C. , opinion No. 288, Nos. G-2569, G-2570, November 28, 1955, affirmed as *Signal Oil and Gas Co.* v. *F. P. C.*, 238 F. 2d 771 (CA ?), certiorari denied, 353 U. S. 923.

The examiner has found there is a need for those volumes of gas on the system of Tennessee Gas, and that the applicants are ready and able to deliver them and take them, respectively. These findings we adopt. They argue conclusively that the sale is necessary in the public interest. All that remains for disposition is a determination as to the rate level at which the public convenience and necessity requires them to be made. Compelling reasons prevent [fol. 526] us from postponing making these volumes available, however, until such time as the determination has been made.

The contracts between CATCO and Tennessee Gas provide November 1, 1957, as the date for commencing service, and in order to comply with the leases and the Louisiana

Shelflands Act, production should commence by 1958. To meet this schedule Tennessee Gas must build its underwater pipelines before the onset of the season of bad weather. In view of this total situation we are disposed at this time to grant temporary certificates to CATCO for the sale of gas and to Tennessee Gas as requested by it for its proposed 107 miles of connecting pipelines.[1] At the same time, we shall remand the CATCO proceedings to the presiding examiner to determine at what rates the public convenience and necessity requires these sales to be made if permanent certificates are to be granted to these companies upon final disposition of their applications. By the procedures adopted here, however, we do not necessarily imply that the rates at which the proposed sales would be made are not in the public interest.

THE COMMISSION FINDS:

(1) Continental, Atlantic, Tidewater, and Cities Service, independent producers of natural gas with respect to the sales here involved, upon commencement of the sales authorized herein, will be engaged in the sale of natural gas in interstate commerce for resale for ultimate public consumption, subject to the jurisdiction of the Commission, and each will, therefore, be a "natural-gas company" within the meaning of the Natural Gas Act, if not already in this status because of other transportation or sales.

(2) The sales of natural gas by CATCO hereinbefore described, as more fully described in the applications, will be made in interstate commerce, subject to the jurisdiction [fol. 527] of the Commission, and such sales by CATCO, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

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[1] By letter of March 29, 1957, Tennessee Gas was granted a temporary certificate for facilities covered by the same application in docket No. G-11107, but specifically excluding the 107 miles of pipeline referred to here.

(3) Tennessee Gas in engaged in the transportation of natural gas in interstate commerce and the sale of natural gas in interstate commerce for resale for ultimate public consumption subject to the jurisdiction of the Commission, and, therefore, is a "natural-gas company" within the meaning of the Natural Gas Act as heretofore found by the Commission.

(4) The facilities to be constructed by Tennessee Gas as hereinbefore described are proposed to be used in the transportation and sale of natural gas in interstate commerce, subject to the jurisdiction of the Commission, as an integral part of Tennessee Gas' existing pipeline system, and the construction and operation thereof by Tennessee Gas are subject to the requirements of subsections (c) and (e) of Section 7 of the Natural Gas Act.

(5) To assure maintenance of adequate service and to serve Tennessee Gas and its customers, the public convenience and necessity requires that temporary certificates be issued to CATCO and Tennessee Gas as hereinafter ordered.

(6) It is necessary and appropriate in the administration of the Natural Gas Act that the proceedings in docket Nos. G-11024, G-11034, G-11046, and G-11049 be remanded to the presiding examiner to make the determination required in (D) below.

(7) To the extent that the exceptions above referred to are inconsistent with the Commission's order herein, they should be denied.

[fol. 528] THE COMMISSION ORDERS:

(A) A temporary certificate of public convenience and necessity is hereby issued to CATCO authorizing the sale of natural gas to Tennessee Gas, from CATCO's leases in the East Cameron, West Cameron and Vermilion areas off the coast of Louisiana in the Gulf of Mexico, together with the construction and operation of any facilities, subject to the jurisdiction of the Commission, used for such sale, as hereinbefore described and as more fully described in the applications in this proceeding.

(B) A temporary certificate of public convenience and necessity is hereby issued authorizing Tennessee Gas to construct and operate approximately 107 miles of pipeline to transport natural gas from the offshore platforms of CATCO to Tennessee Gas' main system at Kinder, Louisiana, as hereinbefore described and as more fully described in its application.

(C) The temporary certificates issued herein shall be without prejudice to such final disposition of the applications of CATCO and Tennessee Gas as the record may require.

(D) The proceedings in Docket Nos. G-11024, G-11034, G-11046, and G-11049 shall be remanded to the presiding examiner to determine at what rate the public convenience and necessity requires the sale of natural gas by CATCO to Tennessee Gas to be made if these CATCO companies are granted permanent certificates of public convenience and necessity.

(E) In proceedings conducted in accordance with the requirements of paragraph (D) above the burden of proof and the burden of going forward with the presentation of evidence shall be upon the applicants herein, the CATCO Companies and Tennessee Gas.

(F) The certificates of public convenience and necessity issued herein are conditioned upon the receipt by the Commission within 15 days of the issuance of this order of [fol. 529] letters signed by a duly authorized official of each of the CATCO Companies and Tennessee Gas, unconditionally accepting the temporary certificates hereby granted under the conditions herein stated.

(G) Exceptions filed with respect to the initial decision of the presiding examiner which are inconsistent with our action herein are hereby denied.

By the Commission.

JOSEPH H. GUTRIDE,
Secretary.

In the Matters of	
Continental Oil Company	Docket No. G-11024
The Atlantic Refining Company	Docket No. G-11034
Cities Service Production Company	Docket No. G-11046
Tidewater Oil Company	Docket No. G-11049
Tennessee Gas Transmission Company	Docket No. G-11107

April 22, 1957

Digby, Commissioner, concurring:

I concur completely in the issuance of temporary certificates to the producers and to Tennessee. I also concur in the order reopening and referring the record back to the Examiner to be proceeded with on the applications of the producers for permanent and final certificates of public convenience and necessity to make the sale to Tennessee. I do not believe that the Commission should presume that the final certificates, if and when issued, should be conditioned by prescribing an initial rate.

S. L. Digby, Commissioner

[fol. 530]

EXHIBIT D TO PETITION

Findings and Order Issuing Permanent Certificates of Public Convenience and Necessity and Modifying Previous Order.

(Issued May 20, 1957)

UNITED STATES OF AMERICA

FEDERAL POWER COMMISSION

Before Commissioners: JEROME K. KUYKENDALL, Chairman; SEABORN L. DIGBY, FREDERICK STUECK, WILLIAM R. CONNOLE and ARTHUR KLINE.

IN THE MATTERS of	
CONTINENTAL OIL COMPANY	Docket No. G-11024
THE ATLANTIC REFINING COMPANY	Docket No. G-11034
CITIES SERVICE PRODUCTION COMPANY	Docket No. G-11046
TIDEWATER OIL COMPANY	Docket No. G-11049

On May 6, 1957, Continental Oil Company, The Atlantic Refining Company, Cities Service Production Company, and Tidewater Oil Company (together termed CATCO) filed a document entitled "Application for Rehearing" but in effect requesting modification of the Commission's order of April 22, 1957, issuing temporary certificates of public convenience and necessity to CATCO and Tennessee Gas Transmission Company in docket No. G-11107. Since the order of April 22, 1957, was not a final order and since CATCO's filing did not request a hearing, but rather modification of our order, we shall treat the filing as a motion for modification. Answers were filed on May 14, 1957, by Public Service Electric and Gas Company, and on May 16, [fol. 531] 1957, by the New York Public Service Commission, Lake Shore Pipe Line Co., Brooklyn Union Gas Company, and Long Island Lighting Company requesting that

the Commission deny CATCO's motion, and on May 16, 1957, by Tennessee Gas urging that the motion be granted.

The temporary certificates issued by our order of April 22, 1957, authorized CATCO to sell natural gas to Tennessee Gas from CATCO's leases in the East Cameron, West Cameron and Vermilion areas off the coast of Louisiana in the Gulf of Mexico, and authorized Tennessee Gas to construct and operate approximately 107 miles of pipeline from the offshore platforms of CATCO to a point on its main system at Kinder, Louisiana. The Commission remanded the proceedings to the presiding examiner to determine at what rate the sale of natural gas by CATCO to Tennessee Gas should be made if permanent certificates were to be granted.

By their filing of May 6, 1957, the CATCO companies state that the nature and extent of the economic risk which they would have to undergo is such as to foreclose their acceptance of temporary certificates. They say further that they could not present sufficient evidence at the hearing contemplated by the Commission's order within any reasonable period in the future and could not afford to commence construction until at least the initial rate question is resolved.

The CATCO companies urge that if there is no change in existing law the Commission will have continuing control, under Sections 4 and 5 of the Natural Gas Act, over the rate to be charged and any increases proposed. However, if the Harris Bill, H. R. 6790, 85th Congress, or some bill similar to it, becomes law they admit that the Commission might possibly lose continuing supervision over the future price increases provided in the several contracts between the CATCO companies and Tennessee Gas. To permit the Commission to retain such supervision the CATCO companies propose to amend their contracts so that, if the Harris Bill is enacted into law, the initial sales [fol. 532] price shall be 21.4 cents per Mcf[1] until November 1, 1962, as at present, but after that the "reasonable market price" within the meaning of the bill and as determined by

[1] Reimbursement for the one-cent Louisiana gathering tax would be in addition to this amount.

this Commission shall prevail; provided, however, that such "reasonable market price" shall be "not less than 21.4 cents per Mcf." Under this proposal, adjustments may be initiated by the sellers at four-year intervals under "indefinite pricing clauses", which would replace the "definite pricing clauses" contained in the contracts but would be limited by the step increases now provided in the contracts. Tennessee Gas states in its answer that it agrees with and fully supports CATCO's proposal and will enter into the proposed amendments to the gas sales contracts of the CATCO companies.

In view of the need for the volumes of gas and the exigencies of the construction schedule to which we adverted in our previous order, we are disposed to modify our order of April 22, 1957, and to grant a permanent certificate to CATCO conditioned upon the amendment of the contracts between them and Tennessee Gas to reflect the modifications of CATCO's proposal in this regard as hereinafter stated. However, this proposal does not go far enough, for it leaves unaffected the 21.4 cents initial sales price. As we have already stated, the record does not contain sufficient evidence on which to base a finding that the public convenience and necessity requires the sale of the gas at that particular rate level. Furthermore, under the provisions of the so-called Harris Bill, if it is enacted into law, the proposed initial price might no longer be subject to adjustment by us. At the same time we realize that any proceeding to determine the proper rate level would so delay the construction schedule as to cause possible forfeiture of the leases. To permit the CATCO companies and Tennessee Gas to proceed with their plan to make available the volume of gas contemplated to be delivered from the offshore leases and at the same time insure that the interests of consumers are protected not only as to the [fol. 533] future prices, but as to the initial price, we conclude that permanent certificates should issue to CATCO upon acceptance by it of the condition described below, without remanding the proceedings to the presiding examiner as we had provided.

The condition to the certificates shall be that each of the CATCO companies shall amend its contract with Tennessee

Gas so as to provide that the initial price shall be 18 cents per Mcf (including one cent per Mcf for the Louisiana gathering tax). This price, the record shows, is the highest price presently being paid by Tennessee Gas for the purchase of any gas produced in the Southwest area. The contracts shall be further amended to provide that the CATCO companies shall be entitled to file for an increased rate to be effective one day after commencement of deliveries to Tennessee Gas, but such increased rate shall not be in excess of 22.4 cents per Mcf (inclusive of the one-cent Louisiana gathering tax). The contracts shall also be amended to provide that the price so determined and fixed shall be in effect to November 1, 1962, unless changed by the Commission as hereinafter provided, and seller may file for indefinite price increases to be effective on or after November 1, 1962, as provided in the herein proposed amendments to the contracts.

We are not determining that the 18-cent maximum price set herein is the proper price under the standards of the Act as presently constituted or as it might be amended by the Harris Bill. What we are doing is providing a means of protecting the interests of the consuming public while at the same time giving the producers and the pipeline company an opportunity to go forward with their respective construction programs. Under the present provisions of the Act, we have the power to suspend for a period of five months any proposed increased rates; however, to give further assurances to the producers that they will not be penalized by suspension action, we propose to limit suspension of the initial rate increase filing to a period of 24 hours. Thus, the producers are assured of receiving the proper [fol. 534] price under standards of the Act as presently constituted or as they may be constituted at that time.

THE COMMISSION FINDS:

(1) It is necessary and appropriate to modify the Commission's order issued April 22, 1957, in the above-entitled proceeding, in the manner set forth below.

(2) The CATCO companies are able and willing properly to do the acts and to perform the service proposed and

to conform to the provisions of the Natural Gas Act, and the requirements, rules, and regulations of the Commission thereunder.

(3) The sales of natural gas by the CATCO companies to Tennessee Gas, as referred to above, together with the construction and operation of any facilities subject to the jurisdiction of the Commission necessary therefor, are required by the public convenience and necessity, and permanent certificates therefor should be issued as hereinafter ordered and conditioned.

THE COMMISSION ORDERS:

(A) Permanent certificates of public convenience and necessity are hereby issued to the CATCO companies, without further hearing, authorizing the sale of natural gas to Tennessee Gas, from CATCO's leases in the East Cameron, West Cameron and Vermilion areas off the coast of Louisiana in the Gulf of Mexico, together with the construction and operation of any facilities, subject to the jurisdiction of the Commission, used for such sale, as hereinbefore described and as more fully described in the applications in this proceeding, subject to the conditions set forth below.

(B) Each of the CATCO companies, within 20 days after the issuance of this order, shall file with the Commission a duly executed amendment to Section 10 of the contract submitted as an exhibit to its certificate application providing for sale of natural gas to Tennessee Gas embodying the following language:

> [fol. 535] 10. *Prices*—The prices to be paid by Buyer to Seller for all gas delivered to or, if available and not taken by Buyer, to be paid for hereunder, shall be as follows:
>
> From the date of initial delivery, or November 1, 1957, whichever occurs first - - - - - - 17 cents per Mcf; provided that after the 17-cent price referred to above has been in effect for one day, Buyer agrees that Seller may file with the Federal Power Commission a proposed changed and increased price which shall be not more than 21.4 cents per Mcf, and Seller

shall be entitled to receive and Buyer shall pay such portion of such increased price as may be allowed by the Federal Power Commission under then applicable statutory standards. The price so allowed by the Federal Power Commission shall continue in effect to November 1, 1962, unless otherwise changed by the Federal Power Commission under applicable statutory provisions. Provided that if Seller should determine that the price determinable under applicable statutory standards for gas at the points of delivery for any of the four (4) year periods hereinafter listed should be in excess of the price then being paid hereunder, Seller may notify Buyer, not less than eight months prior to the commencement of such period, that Seller proposes to increase the price to be paid by Buyer hereunder during such period and until a subsequent determination by Seller that the price determinable under then applicable statutory standards is in excess of the price then being paid hereunder, and Seller shall be entitled to receive and Buyer shall pay such portion of such proposed increased price as may be allowed by the Federal Power Commission under then applicable statutory standards.

Any price so determined and fixed shall be not less than the price determined and fixed by the Commission under applicable statutory standards and not more than:

[fol. 536]

23.4 Cents per MCF.....	From November 1, 1962 to November 1, 1966
25.4 Cents per MCF.....	From November 1, 1966 to November 1, 1970
27.4 Cents per MCF.....	From November 1, 1970 to November 1, 1974
29.4 Cents per MCF.....	From November 1, 1974 to November 1, 1978;

and, in the event the term of this contract is extended hereunder beyond November 1, 1978, then not more than

31.4 Cents per MCF.....	From November 1, 1978 to November 1, 1982
33.4 Cents per MCF.....	From November 1, 1982 to November 1, 1986
35.4 Cents per MCF.....	From November 1, 1986 to the expiration of this contract

Except as altered hereinabove, the provisions of Section 10 shall remain unaffected and in full force and effect.

(C) The certificates issued herein shall be accepted in writing and under oath within 30 days from the date of issuance of this order and by such acceptance the CATCO parties shall severally and collectively obligate itself and themselves to commence service upon the completion of construction of the "offshore facilities" by Tennessee Gas. Such acceptance or acceptances shall be accompanied by a resolution of the Board of Directors duly authenticated indicating the approval of the acceptance of the certificates hereby granted.

(D) The certificates issued herein are not transferable and shall be effective only so long as each CATCO company continues the acts or operations hereby au- [fol. 537] thorized in accordance with the provisions of the Natural Gas Act, and the applicable rules, regulations and orders of the Commission.

(E) The grant of the certificates herein shall not be construed as a waiver of the requirements of Section 4 of the Natural Gas Act, or of Part 154 of the Commission's Regulations thereunder requiring the filing of rate schedules for the services herein authorized; and is without prejudice to any findings or orders which have been or may hereafter be made by the Commission in any proceeding now pending or hereafter instituted by or against the CATCO companies. Further, our action in this proceeding shall not foreclose nor prejudice any future proceedings or objection relating

to the operation of any price or related provision in the gas purchase contracts herein involved.

(F) Paragraphs (A), (C), (D), (E), and (F) of the order issued April 22, 1957, insofar as they are inconsistent with the provisions of this order, are hereby modified.

By the Commission. Commissioner KLINE concurring in part. Commissioner DIGBY dissenting.

JOSEPH H. GUTRIDE,
Secretary.

[fol. 538]

IN THE MATTERS of	
CONTINENTAL OIL COMPANY	Docket No. G-11024
THE ATLANTIC REFINING COMPANY	Docket No. G-11034
CITIES SERVICE PRODUCTION COMPANY	Docket No. G-11046
TIDEWATER OIL COMPANY	Docket No. G-11049

(Issued May 20, 1957)

KLINE, Commissioner, concurring in part:

I concur solely because I see no other ready solution to the problems presented in this proceeding. I feel that under ordinary circumstances the fixing of initial prices in a sales contract is a matter between the producer and purchaser and that the Commission should not attempt to take over this function. I agree with the Commission action in this case solely because of the unusual situation confronting us.

I cannot concur with the Commission action in one respect. I would provide that the contract be amended as set forth in Paragraph (B) of the Commission order only in the event that the Harris Bill becomes law. I would

provide that in the event the bill does not become law the certificate issue at the initial contract price of 21.4¢ per Mcf. The right of the Commission or interveners to invoke Section 5(a) proceedings is sufficient protection to the consumers under existing law.

ARTHUR KLINE,
Commissioner.

[fol. 539]

EXHIBIT E TO PETITION

Application of New York Commission for Rehearing and Rescission of the Order Issued on June 24, 1957.

BEFORE THE

FEDERAL POWER COMMISSION

IN THE MATTERS OF	
CONTINENTAL OIL COMPANY	Docket No. G-11024
THE ATLANTIC REFINING COMPANY	Docket No. G-11034
CITIES SERVICE PRODUCTION COMPANY	Docket No. G-11046
TIDEWATER OIL COMPANY	Docket No. G-11049

The Public Service Commission of the State of New York, an interested State Commission aggrieved by the order issued herein on June 24, 1957, hereby applies for rehearing pursuant to the provisions of Section 19(a) of the Natural Gas Act. We request the Federal Power Commission to reconsider and rescind its order of June 24, 1957, and to reaffirm either of the orders previously issued in these matters on April 22, 1957, and on May 20, 1957.

NATURE OF EXCEPTIONS.

We except to the *conclusion* that public convenience and necessity requires or permits the issuance of permanent cer-

tificates herein at the proposed initial price of 22.4 cents per Mcf, on the ground that said conclusion is not supported by adequate evidence in the record or by adequate findings.

We except to the *finding* that the public served through the system of Tennessee Gas Transmission Company is greatly in need of increased supplies of natural gas, on the ground that there is not a shred of evidence in this record to support the finding, and on the further ground that even if a need for additional supplies at prices no higher than those currently paid may be presumed, need for gas at 22.4 cents cannot.

[fol. 540] ARGUMENT IN SUPPORT OF APPLICATION.

A. Inadequacy of the evidence to support the finding that the public served through Tennessee is greatly in need of increased supplies of natural gas.

The record in this proceeding does not contain a single word of *testimony* to suggest, let alone support the finding, that Tennessee's customers need additional gas. The unsworn and wholly unsupported assertions of Tennessee's Counsel to the effect that certain distributing company customers, one month *before* consummation of the CATCO contract, indicated a desire for additional gas, does not fill this void. Nor is that the kind of "evidence" upon which an administrative agency may lawfully base a finding.

Our motion to consolidate Tennessee's certificate application, G-11107, with the instant proceeding in order to facilitate *proof* of such alleged "need" was opposed by the applicants and denied by the Commission by an order issued herein on March 29, 1957.

These factors (the absence of any evidence in this record of the need for gas and the applicants' unwillingness to submit such proof in this proceeding), together with the failure of any Tennessee's customers to appear in support of the application, and Tennessee's notoriously zealous efforts to persuade opponents of the application to absent themselves from Washington, all cast considerable doubt as to how much, if any, additional gas is desired or "needed" at 22.4 cents per Mcf.

With respect to the April 22, 1957, and May 20, 1957, orders, we do not press the objection that there is no evidence to show a need for the gas, since we do not consider ourselves aggrieved by these orders. In both, the need for additional supplies at reasonable prices was assumed. The most vital aspect of that assumption—price—was left for further inquiry.

We do, however, press this objection most strenuously with respect to the June 24, 1957, order. Underlying that order is nothing more than a wholly baseless assumption that the consuming public needs gas at any price the pro- [fol. 541] ducers choose to exact. We respectfully submit that no one can prove that, much less assume it!

B. Inadequacy of the evidence and the findings to support the conclusion that public convenience and necessity requires or permits the sale at 22.4 cents per Mcf.

The order of June 24, 1957, reveals that the Commission has surrendered its former conviction and ridden rough-shod over its former determinations as to the inadequacy of the instant record to justify the sale at 22.4 cents per Mcf, on the basis of two primary considerations: (1) the "great need" for additional gas by the public served through Tennessee, and (2) the ultimatum of the applicants to withdraw the gas from interstate commerce unless the Commission capitulated to their terms.

These considerations have been potential aspects of this case throughout this proceeding. Although they were apparent and fully appreciated on April 22 and May 20, they were not then regarded as sufficient to induce or permit the Commission to certificate unconditionally these sales at the proposed price. That the Commission was thoroughly convinced of a need for this gas long before June 24 is conclusively demonstrated by the fact that it *granted* temporary certificates on April 22 and permanent certificates on May 20. If it had not on those dates implicitly found or assumed a need for the gas, it would have been obliged to deny the applications without further inquiry.

That it is within the power and discretion of disgruntled applicants to reject certificates and withdraw the service offered is not a novel consideration which first came to light in this proceeding on June 24. That discretion or power is implicit from start to finish in every producer-certificate case under the Natural Gas Act.

The proceeding, at this juncture, squarely presents the question of what proof is required under Section 7(e) of the Natural Gas Act to permit the issuance of certificates of public convenience and necessity.

[fol. 542] Heretofore nothing could have been clearer than the fact that a "vital element" in the proof of public convenience and necessity was concerned with the propriety of the rates proposed in the circumstances surrounding the sale. That had been specifically decided by the Commission in the *Signal Oil* case. See *Cities Service Gas Co., Signal Oil & Gas Co.*, 12 PUR 3d 3, Nos. G-2569, G-2570, Op. No. 288, Nov. 28, 1955. It had been specifically affirmed by the Court in *Signal Oil & Gas Co.*, v. *FPC*, (3d Cir.) 238 F. 2d 771, cert. den. 353 U. S. 923. It had been specifically reiterated by the Commission in the April 22 and May 20 orders issued in this proceeding.

We must now consider whether a need for the gas on the part of consumers accompanied by a threat to withdraw the gas on the part of producers, unless they can exact their chosen price, either (1) eliminates the need for consideration of this "vital element", or (2) itself is proof that the rates proposed are justifiable.* It is our contention that the postulate does not lead to either result.

On its face, the Commission's latest order appears to proceed upon the thesis that the *greater* the demand for the gas, the *less* significant is the question of price. That view, we submit, is utterly incompatible with the Natural Gas Act. The primary, if not the sole purpose of the Natural Gas Act is to protect consumers of gas against

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* We are unable to ascertain, after several rereadings of the June 24 order, which of these positions the Commission there adopts.

exploitation by natural gas companies. There can be no opportunity for exploitation unless demand or need for gas exceeds the supply available on the interstate market. Where that situation occurs, that is, where a demand for gas is present, the statute mandates the Commission to protect the consumer against exploitation. It is obvious, therefore, that the *greater* the demand for gas and the *greater* the accompanying opportunity for exploitation, the *more* significance attaches to the issue of price and the *more* vigilance is required of the Commission to protect the consumer.

[fol. 543] The phrase "public convenience and necessity" does not have a fixed content for all time and all circumstances. It is quite meaningless in itself unless it is related to and given a scope consistent with, the purposes and policies of the statute in which it is found. We find it impossible to comprehend how exploitation can be prevented, particularly in the circumstances presented in this proceeding, if the propriety of price is not to be scrutinized.

The Commission's position is not supported by authority, precedent, logic or the statute. It can only be said to constitute an abandonment of the statutory duty owed the consumer and makes it unmistakably plain to the gas-producing and gas-consuming community alike that if the public wants gas, it is going to have to pay exactly what the producers demand for it. In other words, it would now appear that the Commission is not prepared to offer the consumer one iota more protection than he would have in the unregulated open market if Section 7(e) had never been enacted. We are not hopeful that this feature of the instant proceeding will go unnoticed by the producers.

The always-present power to reject unsatisfactory certificates and the threat to use that power has never, so far as we are aware, been thought to eliminate, modify or affect the proof required by statute to establish public convenience and necessity. It is inconceivable that it should be otherwise, or that public convenience and necessity should ever require or permit abject submission by a regulatory agency to any ultimatum of a regulated company. If the existence of the power to reject, accompanied

by the threat to use it, could eliminate the necessity for proof of one "vital element" of convenience and necessity, it could as readily eliminate the necessity for proof of all other elements. It could justify the issuance of certificates on nothing more than an application together with a threat to reject any certificate which failed to grant everything the application demanded. In the *Signal* case, where the power to reject certificates was every bit as real as it is here, the Commission nevertheless held that proof of the propriety of price was required. Can it be said that the [fol. 544] truisms therein espoused become gibberish when the applicant bespeaks himself of that power?

It may be quite true that under the Natural Gas Act the Commission is powerless to compel the dedication of additional gas to interstate commerce. We do not believe, however, that that fact permits emasculation of the provisions of the statute which direct the Commission to control and regulate, for the benefit of the consumer, the terms, conditions and prices at which interstate gas shall flow. The mandate of Section 7(e) that the Commission must scrutinize price in order to fulfill its statutory obligation to protect consumers against exploitation, cannot be ignored simply because applicants *may* be so ill-advised as to make good their threats to kill the goose that lays their golden egg.

CONCLUSION.

The requirement of Section 7(e) of the Natural Gas Act that each applicant prove that public convenience and necessity requires the sale of his gas in interstate commerce at his proposed rate, as enunciated by the Commission in the *Signal Oil* case, as confirmed by the Court in *Signal Oil & Gas Co.* v. *FPC*, *supra*, and as again reiterated by the Commission on April 22 and May 20, cannot be discharged, nor may the need for such proof be eliminated, simply by noting that the public demands gas and the producers have the power to withhold it.

It is impossible to ignore the fact that the importance of this case now far exceeds the limited issues originally presented. If unsupported allegations of need for gas and

untested threats to withhold it will effectively emasculate all semblance of certificate and price regulation, the lesson is clear not only to the present applicants, but to all producers of natural gas.* On the other hand, if the Commis- [fol. 545] sion stands firm upon its own convictions and upon its judicially blessed interpretation of the requirements of proof under the Natural Gas Act, there is no reason to anticipate dire results. No one can reasonably suggest that all future supplies of gas can be economically marketed in their states of origin. Indeed we are firmly convinced that if the CATCO gas could have been marketed in Louisiana anywhere nearly as profitably as it can in interstate commerce, it would have been sold there long before this. But in any event, when they or any other natural gas companies turn to interstate markets, it should be on terms fully disclosed to and approved by the Federal Power Commission, which has the statutory obligation of protecting the public interest, and not on the terms arrogantly and irresponsibly dictated by the applicants.

The order of June 24, 1957 should be rescinded and either of the orders of April 22 or May 20, 1957 reaffirmed. The evidence in this record is totally inadequate to support the conclusion that the sale at 22.4 cents per Mcf is required by public convenience and necessity.

Respectfully submitted,

PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK,

By /s/ KENT H. BROWN
Counsel,
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Albany 1, New York.

Dated: July 22, 1957

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* In fact, the pattern is already becoming sharply defined. In its July 12, 1957 order, issued in *Southern National Gas Co., et al.*, Doc. Nos. G-11234, *et al.*, the Commission has not only granted certificates of convenience and necessity on inadequate proof pertaining to price, but also has even refused to permit intervention by the New York Commission, thereby precluding any presentation of the issue of the sufficieney of the record in this respect.

[fol. 546]

EXHIBIT F TO PETITION

Order Denying Applications for Rehearing.

(Issued August 15, 1957)

UNITED STATES OF AMERICA

FEDERAL POWER COMMISSION

Before Commissioners: FREDERICK STUECK, Acting Chairman; SEABORN L. DIGBY, WILLIAM R. CONNOLE and ARTHUR KLINE.

IN THE MATTERS *of*	
CONTINENTAL OIL COMPANY	Docket No. G-11024
THE ATLANTIC REFINING COMPANY	Docket No. G-11034
CITIES SERVICE PRODUCTION COMPANY	Docket No. G-11046
TIDEWATER OIL COMPANY	Docket No. G-11049

On July 23, 1957, Public Service Electric and Gas Company, The Long Island Lighting Company, and the New York Public Service Commission, and on July 24, 1957, Lake Shore Pipe Line Company, have filed applications for rehearing under Section 19(b) of the Natural Gas Act of our order issued June 24, 1957. In that order upon rehearing, we reversed and set aside our previous orders of April 22, 1957, and May 20, 1957, and adopted, with certain modifications, the initial decision of the presiding examiner granting certificates of public convenience and necessity to Continental Oil Company, The Atlantic Refining Company, Cities Service Production Company, and Tidewater Oil Company (CATCO), for the sale of natural gas from their offshore platforms in the Gulf of Mexico to [fol. 547] Tennessee Gas Transmission Company. We noted that rate investigations had been instituted against Continental Oil, Atlantic and Tidewater, and contemporaneously with our order we instituted a rate investigation

against Cities Service. The certificates issued by our June 24 order have been accepted by all four companies.

The applications do not set forth any contentions or other matter that was not considered by us in connection with our June 24, 1957, order except that the Long Island Lighting Company objects to our adopting the findings of fact and conclusions of the presiding examiner in certain respects. Upon considering this matter further we are of the opinion that our order properly stands upon our own discussion of the facts. Therefore it will not be necessary to adopt the presiding examiner's conclusions on the facts except for the ultimate result of issuing the certificates. We do adopt, however, his recital of the facts.

THE COMMISSION FINDS:

The applications for rehearing of our order issued on June 24, 1957, in this proceeding, except as stated above, set forth no new facts and no principles of law which either were not fully considered by the Commission when it issued that order or which having now been considered warrant any change in or modification of such order. All contentions and objections not specifically discussed or referred to herein have been considered and found either without basis in law or support in fact, but are not sufficiently material to warrant individual treatment or have been adequately disposed of otherwise.

THE COMMISSION ORDERS:

(A) The above applications for rehearing filed on July 23 and 24, 1957 with respect to our order of June 24, 1957, are hereby denied.

[fol. 548] (B) In place of ordering Clause (F) of our order of June 24, 1957, we adopt the recital of facts made by the presiding examiner and his conclusion that certificates of public convenience and necessity should be issued to the CATCO companies.

By the Commission. Commissioner Connole dissenting.

JOSEPH H. GUTRIDE,
Secretary